EXHIBIT A

Expert Report of Wesley B. Curtis Jr.

Owner-Commercial Truck Consulting, LLC

In the Matter of

Villalpando, et al v. Exel Direct, Inc., et al.

August 28, 2015

Qualifications:

I have been operating the consulting firm Commercial Truck Consulting, LLC, since May 2006. My firm provides regulatory compliance consultation to trucking companies, as well as expert witness services in civil litigation regarding accident investigation and other matters. My resume is attached as Exhibit A to this Report.

One portion of my business is inspecting commercial motor vehicles. In order to do so, I must take equipment to the job site to complete the task. I operate a vehicle over 10,000 pounds GVWR (gross vehicle weight rating).

In order to properly pass on the costs of the operation of my company vehicle, I have always done a "cost per mile" analysis so I know what it costs to operate my company vehicle and then pass that cost on to the customer either as a mileage cost or an hourly rate to charge for travel.

I have owned two other businesses in the past: a video arcade (8 years) and a swimming pool business (10 years). In both instances I had company vehicles and had to factor in "cost per mile" to reach an accurate calculation of my vehicle operation expenses, which in turn was used in preparation of bids or monthly service contracts to customers.

Another facet of my business is conducting mock "DOT audits" for trucking companies. The mock audit is designed to simulate the regulatory compliance audits conducted by the Department of Transportation. As part of the DOT audit, I must examine all defects on the a vehicle, demonstrate how defects will be repaired, review vehicle maintenance files and supporting documents, and inform my clients when they must replace tires and parts, among other things.

As part of this process, I have examined hundreds of vehicle maintenance programs for compliance and have examined thousands of work orders, purchase orders, invoices, and parts bills of sale. The trucks involved in these audits are typically the same type of truck as those operated by the Class Members in this case, in terms of size and weight. Thus, I am familiar with the costs and frequency of repairs, maintenance, and other types of upkeep, for the type of commercial truck at issue in this case.

My company also offers information on California regulations. I field several calls per week from trucking companies throughout the United States about the CARB (California Air Resources Board) smog rules. One of the items we often discuss is the cost of retro-fitting older power units (94-2006 models) with a Particulate Matter filter (average cost of a PM filter

$15,000.00) and the worth of the existing power unit (i.e. does it make sense to retro-fit the older power unit?). In providing this service, I ascertain how long the company plans on keeping the vehicles, the current values of the vehicles, what it will cost per mile to pay for the PM filter, among other costs.

As a result, I have extensive personal knowledge of the costs of bringing a commercial truck into compliance with California regulatory standards, as well as the costs of operating a commercial truck in California as a general matter.

Fee Schedule:

My fee schedule, which contains information regarding my hourly rates of compensation for work performed on this case is attached as Exhibit B to this Report. By way of summary, my hourly rates in this case are: 1) $100/hr for travel; 2) $200/hr for research, conferences, consultation with the client, reviewing documents, organizing documents, analysis, testing, responding to discovery requests, report and writing; 3) $250/hr for preparation for court appearance or for being deposed; 4) $350/hr for giving testimony in court or in deposition; and 5) a $250 per diem.

Publications Authored and Expert Witness Experience:

I have not authored any publications in the past 10 years.

In the past four years, I have provided expert testimony in deposition in several cases. A list of the attorneys for whom I have provided expert testimony and the cases in which the testimony was requested is attached as Exhibit C to this report.

Assignment:

I have been retained by Plaintiff's Counsel, Schneider Wallace Cottrell Konecky Wotkyns LLP, in the Villalpando, et al. v. Exel Direct, Inc., et al. case, to serve as a trucking expenses expert. Specifically, I have been asked to opine on the cost per mile of operating a commercial truck of the type operated by the Class Members in this case. To determine a reasonable cost of operation on a per mile basis, I have segregated average operations costs into categories of expenses. I used various data and my own extensive experience in the trucking industry and as a trucking regulatory compliance consultant to determine a reasonable cost per mile for each category of expenses.

I have been informed by Plaintiffs' Counsel that Defendants have not yet completed production of documents responsive to outstanding discovery requests, and additional documents may be forthcoming. Thus, this is a provisional report and my review is ongoing. My report may be modified or augmented because of information received since the production of this report or to address expert opinion that may be proffered on behalf of Exel in this case. I reserve the right to amend or supplement this report in writing, at deposition, or trial.

Methodology:

In preparing this report, I reviewed the following documents: Plaintiffs' Consolidated First Amended Complaint; Defendants' Answer and Affirmative Defenses; Exel's regulatory compliance manual; Exel's standard truck requirements; a document identifying the specifications of the truck driven by one of the two named Plaintiffs (Daniel Villalpando); Exel's own cost-benefit analyses generated to assess the financial implications of transitioning to an independent contractor Driver model; documents generated by Exel showing estimated annual driver operating expenses; documents generated by Exel showing estimated annual driver net earnings after expenses; a spreadsheet prepared by Exel and produced in this litigation showing aggregate compensation and deductions for each Class Member; and Exel's Department of Transportation Regulations Powerpoint presentation.

I also reviewed deposition testimony of Class Member witnesses and Exel's managers concerning the amounts of days Class Members worked per week, the amounts of miles they drove per day, and the amounts of money they paid to their helpers.

In my calculations of "cost per mile" reimbursement rates, I used the following truck as an exemplar:

- Used 2012 International 4300, 2 axle,
- 254" wheel base
- Mileage 94,000 miles
- Diesel power, automatic transmission
- 26 foot box truck

- 96” wide
- Power lift gate-3000 pound capacity
- Roll up door
- Side door
- Cost $48,000.00-used

I used this truck as an exemplar because it is typical of the type and size of box truck used by the Class Members in this case. I have reviewed Exel’s “Standard Truck Requirements,” which reflect that Class Members operate a similar type of truck. This means it is reasonable to assume each class member incurred similar costs (on a per mile basis) associated with maintaining and operating the truck. I have used Exel’s “Standard Truck Requirements” as a benchmark for my calculations.

For the computations listed below, I used a “cost per mile” calculator in an Excel spreadsheet format.

As described below, some expenses are fixed yearly costs associated with owning and operating a commercial truck, regardless of days worked or miles driven. Other expenses may vary according to the amount of miles driven, the amount of days worked, and geographical location, among other factors. In such cases, I have used the lower end of the range to give Exel the benefit of the doubt.

As a general matter, whenever the data or documents I reviewed indicates a range of costs for a particular category of expenses, I used the lower end of the range to calculate the mileage reimbursement rate for that category.

Categories of fixed and variable costs are listed below.

Categories used to compute cost per mile of operation:

For my cost per mile analysis most but not all categories were used. Some did not apply in this scenario

FIXED COSTS:

Fixed costs expenses are costs a person entails just for owning a commercial motor vehicle. It doesn’t matter if the commercial motor vehicle is sitting or moving. There is a daily cost of ownership of the vehicle regardless of what the vehicle is doing.

Operational Fixed Expenses:

> Yearly Truck payment-
>
> Public Liability and Property Damage insurance premiums

Bobtail/Deadhead (truck) insurance premiums
Cargo insurance premiums
Primary Medical insurance premiums
Workers Compensation insurance premiums
License and registration
Permits

VARIABLE COSTS:

Variable costs are expenses that are directly related to operating a commercial motor vehicle. Normally the more miles the commercial motor vehicle is operated the higher the costs will be. Fuel, tires, maintenance, and meals and lodging are examples of variable costs.

Operational Variable Expenses:

Truck Fuel
Meals or per diem meal expense
Telephone
Tolls
Tires-11R22.5-6 tires
Preventative Maintenance-service at 10,000 miles X 5
Repairs (replacing a truck part) and tow truck services
Laborer Wages (total paid to laborer working for you)
Payroll Taxes for employee laborer
Taxes: Road, Fuel, Property, Federal highway use
Misc Expenses and Losses

Days Worked, Miles Driven, and Fuel Costs:

Testimony from Exel managers and recruiters, as well as policy and other documents produced by Exel in this litigation indicate that Drivers typically worked from 5 to 6, and sometimes 7 days per week, although there may be some Drivers who work part time as well. Exel's own internally-generated estimates indicate that Class Members worked for an average of 260 days per year. To allow for Class Members who worked less than five days per week, I am using 240 days per year.

Exel's own internally-generated estimates indicate that on a national basis, its Drivers drive approximately 200 miles per day. Other documents produced by Exel indicate that delivery drivers at some locations drove as many as 300 miles per day. However, one high-ranking Exel manager testified that Drivers in California typically drove 150-175 miles per day. Data produced in this litigation by Exel covering many California locations indicates an average of 164 miles driven per day. Thus, I performed three sets of calculations: one assuming 150 miles per day, another assuming 164 miles per day, and another assuming 175 miles per day. To the extent the drivers drove less than 150 miles per day, the per-mile rate would actually increase.

To determine average cost of fuel per gallon for the diesel fuel required by the type of truck driven by Class Members in this case, I queried the U.S. Energy Information Administration Petroleum & Other Liquids website to obtain the mean fuel price of such diesel fuel from 2009 through 2014.

Weekly Retail Gasoline and Diesel Prices

(Dollars per Gallon, Including Taxes)

Area: California **Period:** Annual

Download Series History Definitions, Sources & Notes

Show Data By: ◉ **Product** ○ **Area**	**GraphClear**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**View History**
Gasoline - All Grades	☐	2.725	3.138	3.863	4.081	3.933	3.794	2000-2014
All Grades - Reformulated Areas	☐	2.725	3.138					1995-2010

Regular	☐	2.678	3.091	3.817	4.034	3.886	3.745	2000-2014
Reformulated Areas	☐	2.678	3.091					1995-2010
Midgrade	☐	2.785	3.200	3.924	4.141	3.994	3.857	2000-2014
Reformulated Areas	☐	2.785	3.200					1995-2010
Premium	☐	2.888	3.302	4.026	4.244	4.098	3.963	2000-2014
Reformulated Areas	☐	2.888	3.302					1995-2010
Diesel (On-Highway) - All Types	☐	2.607	3.157	NA	4.230	4.126	4.004	1995-2014
Ultra Low Sulfur (15 ppm and Under)	☐	**2.607**	**3.157**	**4.084**	**4.230**	**4.126**	**4.004**	2007-2014

Data points:

a. 150 miles per day times 240 work days per year=36000 miles annually

b. 164 miles per day times 240 work days per year=39360 miles annually

c. 175 miles per day times 240 work days a year=42000 miles annually

d. Computed Fixed expenses on a yearly bases-2012

e. Computed Variable expenses on a yearly basis-2012

f. Computed diesel fuel prices of a 6 year average (2009-2014) $3.96 per gallon

Summary of Findings:

Based on my extensive experience calculating cost-per-mile expenses in the course of running my own businesses and operating my own truck, inspecting hundreds of trucks, reviewing purchase orders, maintenance records, and regulatory documents in the course of providing consulting services, conducting hundreds of accident investigations, and my examination of

Exel's written policies, the testimony of its managers and executives, and Exel's own standard truck requirements, I have reached the following cost per mile calculations:

Cost Per-Mile Breakdown:

1. Fuel (Variable Expense): 8-10 miles per gallon.

Truck size:	**22'/26' Truck**	
Fuel Type:	**Diesel**	**Gasoline**
MPG Average:	**8**	**6**

Source: Penske (largest renter of box trucks)

The nation's leading truck rental company estimates that the types of box trucks used by Class Members in this case get 8 miles per gallon. In my personal experience and working with numerous trucking companies, I have come across slightly higher MPG figures for similar box trucks. Thus, to give Exel the benefit of the doubt, I have assumed that the box trucks driven by Class Members get, on average, 10 miles to the gallon.

A. Formula: 36,000 miles operate divided by mpg-miles per gallon (10) equals 3600 gallons of fuel per year. 42,000 miles divided by 10 mpg equals 4200 gallons of fuel per year.

B. 3600 gallons of fuel times $3.96 (cost of fuel per gallon) equals $14,256.00 yearly expense

3936 gallons of fuel times $3.96 (cost of fuel per gallon) equals $15,586.56 yearly expense

4200 gallons of fuel times $3.96 (cost of fuel per gallon equals $16,632.00 yearly expense

C. Divide annual cost of fuel by miles traveled for the year and it gives you cost per mile

1. $14,256.00 divided by 36000 miles equals .39 cents per mile
2. $15,586.56 divided by 39360 miles equals .39 cents per mile*
3. $16,632.00 divided by 42000 miles equals .39 cents per mile*

I note this is less than the $1,500 per month average fuel cost estimate provided by Exel through discovery in the document entitled "Realistic Preview of Business Opportunity."

2. Truck Payment (Fixed Expense): 2012 purchase price $48,000.00, 72 months a 10% interest equals $955.93 monthly payments

A. Formula: Total payments annually $11,471.16 divided by miles driven for the year

1. $11471.16 divided by 36000 miles equals .31 cents per mile*
2. $11471.16 divided by 39360 miles equals .29 cents per mile*
3. $11471.16 divided by 42000 miles equals .27 cents per mile*

Source: Overdrive Magazine July 2012 Alicia Collster, Finance Manager at Arrow Truck Sales, Atlanta location. Interest rates for trucks was 10-30%

The amount of monthly truck payments is determined by the purchase price and financing plan of each truck operated by a Class Member. As an exemplar, I selected the above 2012 used truck meeting Exel's Standard Truck Requirements. The specifications of the exemplar truck are listed above. To give Exel the benefit of the doubt, I selected a used vehicle as an exemplar. The monthly payments would be considerably higher if the truck in question was purchased new.

Interest rates for such vehicles in 2012 ranged from approximately 10 to 30%. To give Exel the benefit of the doubt, I assumed a 10% rate of interest in my calculations.

3. Truck Insurance-$5,000,000.00 (Fixed Expense): Annual cost $2,000.00

A. Formula: Total payments annually $2,000.00 divided by miles driven for the year

1. $2,000.00 divided by 36000 miles equals .05 cents per mile*
2. $2,000.00 divided by 39360 miles equals .05 cents per mile*
3. $2,000.00 divided by 42000 miles equals .04 cents per mile*

Based on documents produced by Exel in this litigation, Exel requires truck insurance meeting a $5,000,000 coverage threshold. Thus, I reviewed a range of insurance listings offered by vendors online, for truck insurance meeting the $5,000,000 policy threshold. I then took the average annual cost of such coverage for each year from 2008 to 2015, and identified an annual average cost for all 8 years.

The $2,000 annual cost is comparable to the annual amount of deductions to payments charged by Exel for liability insurance in those cases where Exel provided the liability insurance to drivers directly, and then deducted the cost from their payment. I know this because I reviewed driver compensation and deductions data produced by Exel in this litigation.

4. Cargo Insurance-$3,000,000.00 (Fixed Expenses): Annual cost $3,000.00

A. Formula: Total payments annually $3,000.00 divided by miles driven for the year

1. $3,000.00 divided by 36000 miles equals .08 cents per mile*
2. $3,000,00 divided by 39360 miles equals .07 cents per mile*
3. $3,000.00 divided by 42000 miles equals .07 cents per mile*

To identify yearly cargo insurance costs, I looked at price quotes for the leading insurance companies that provide cargo insurance coverage for commercial truckers. The annual cost listed here is based on an average of current insurance quotes from the leading insurance providers.

5. Medical Insurance-Single person (Fixed Expense): Annual cost $3,427.00 per year

A. Formula: Total payments annually $3,470.00 divided by miles driven for the year

1. $3,427.00 divided by 36000 miles equals .09 cents per mile*
2. $3,427.00 divided by 39360 miles equals .08 cents per mile*
3. $3,427.00 divided by 42000 miles equals .08 cents per mile*

Source: Health Insurance Marketplace, Covered California Website

I calculated medical insurance costs by using California's state exchange website (Covered California) to identify the annual cost of the most inexpensive health insurance plan available, providing for basic coverage.

6. Workers Compensation Insurance Premium (Fixed Expense): Annual cost $5,774.00 based on wages of helper

A. Formula: Total payments annually $5774.00 divided by miles driven for the year

1. $5,774.00 divided by 36000 miles equals .16 cents per mile*
2. $5,774.00 divided by 39360 miles equals .15 cents per mile*
2. $5,774.00 divided by 42000 miles equals .14 cents per mile*

Source: Jackson & Eklund-an accounting firm in McKinleyville California

I requested that an accounting firm assist me in determining the annual cost of workers compensation insurance, assuming Class Members supplied premiums for their assistant laborers each year. Based on Exel's own estimates as to the Class Members' costs of hired help, as well as the testimony of Class Members, I assumed that each Class Member employed a helper, and each helper was paid $100 per day. This was on the low end of what Class Members testified regarding how much they paid their helpers.

I worked with the accounting firm to survey 99 small companies. The average workers compensation insurance premium for these companies was approximately 25% of gross wages. Assuming gross annual wages of $24,000 for each helper, this worked out to the total annual payments listed above.

7. License/Registration/CVRA (Fixed Expenses): Annual cost $1,200.00

A. Formula: Total payments annually $1,200.00 divided by miles driven for the year

1. $1,200.00 divided by 36000 miles equals .03 cents per mile*
2. $1,200.00 divided by 39360 miles equals .03 cents per mile*
3. $1,200.00 divided by 42000 miles equals .02 cents per mile*

Source: California Department of Motor Vehicles, and personal knowledge

In California, there are fixed licensing, registration, and Commercial Vehicle Registration fees. These fixed costs have not changed appreciably throughout the class period (2008 to 2015). To reach these figures, I spoke with a contact at the California Department of Motor Vehicles, who provided cost information for license and registration for commercial trucks in California. I am also familiar with these costs because I personally pay them, and pay them directly for some of my clients.

8. Permits-MCP, Truck Inspection, UCRA (Fixed Expense): Annual cost $292.00

A. Formula: Total payments annually $240.00 divided by miles driven for the year

1. $292.00 divided by 36000 miles equals .01 cents per mile*
2. $292.00 divided by 39360 miles equals .01 cents per mile*
3. $292.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge

In California, there is an annual truck inspection fee of $90.00. The motor carrier permit costs $120.00 per year. California commercial truckers also must obtain a Unified Motor Carrier Registration, which costs $82 per year. As an operator of a commercial motor vehicle, I am familiar with these costs because I pay them on an annual basis. In addition, there are other regulatory fees associated with operating a commercial truck.

In addition, my consulting company provides offers a "full-service" option to trucking companies, so in many instances I have to pay these fees for my clients directly. Thus, I am familiar with the average annual cost of permits, inspections, and registrations for commercial motor vehicle operators.

9. Meals (Variable Expense): Annual cost $1,200 ($5.00 per day)

A. Formula: Total payments annually $1,200.00 divided by miles driven for the year

1. $1,200.00 divided by 36000 miles equals .03 cents per mile*
2. $1,200.00 divided by 39360 miles equals .03 cents per mile*
3. $1,200.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge-bring lunch from home or stopping at fast food

Meal costs are variable according to trucker preference and geographical availability. I used a per-day meal costs estimate on the low end of the range. Five dollars is the approximate cost of a modest lunch prepared at home, or of a small meal purchased at an inexpensive truck stop or fast food restaurant.

10. Cell Phone (Variable Expense): Annual cost $1000.00 (phone/text/internet)

A. Formula: Total payments annually $1,000.00 divided by miles driven for the year

1. $1,000.00 divided by 36000 miles equals .02 cents per mile*
2. $1,000.00 divided by 39360 miles equals .02 cents per mile*
3. $1,000.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal Knowledge, CALPIRG Winter 2012-Consumers Guide to a new cellphone plan

As an operator of a small business, I use a smartphone with online capabilities. I have reviewed documents produced by Exel in this litigation indicating that each Class Member had to use a cell phone with internet data capabilities. According to the CALPIRG Consumer's Guide, the cost of monthly cellular smartphone service (including a digital data plan) in 2012 ranged from $60 to $180 per month. To give Exel the benefit of the doubt, I used a number on the lower end of the range.

11. Toll Roads/Bridges (Variable Expenses): Annual cost $1,560.00

A. Formula: Total payments annually $1,560.00 divided by miles driven for the year

1. $1,560.00 divided by 36000 miles equals .04 cents per mile*
2. $1,560.00 divided by 39360 miles equals .03 cents per mile*
3. $1,560.00 divided by 42000 miles equals .03 cents per mile*

Source: Personal Knowledge, Bay Area Toll authority, Tollroads.com

Toll road and bridge fees are variable costs because they depend on geographic area and routes assigned. For example, there may be higher toll costs in the Bay Area because of higher bridge tolls. While tolls could reach $10-15 per day in areas like the Bay area, they could be as a small as $5 or less per day in areas like Los Angeles, particularly if deliveries are confined to a small radius. To give Exel the benefit of the doubt, I assumed a rate of $6 per day, the lower end of the range.

12. Tires-11R22.5 6 tires-1 set per year (Variable Expense): Annual cost $1,350.00

A. Formula: Total payments annually $1,350.00 divided by miles driven for the year

1. $1,350.00 divided by 36000 miles equals .03 cents per mile*
2. $1,350.00 divided by 39360 miles equals .03 cents per mile*
3. $1,350.00 divided by 42000 miles equals .03 cents per mile*

Source: Loves Truck Stop, Tire easy.com

In my personal experience with my own vehicle, and my experience reviewing the maintenance records of hundreds of trucks in my capacity as a commercial trucking consultant, commercial truck operators must purchase approximately 2 sets of tires per year, per truck, depending on how many miles they drive. Tires on the vehicles meeting Exel's "standard truck requirements" (11R22.5 tires) cost approximately $225 per tire. In my experience, while some commercial motor vehicle operators operate more than one truck, and may have to replace their tires for each truck on multiple occasions per year, some operate only one truck, and may only have to replace their tires once per year. Thus, to give Exel the benefit of the doubt, I assumed that on average, Class Members had to replace six tires per year. $225 multiplied by 6 tires (one set) works out to an annual cost of $1,350.00.

13. Preventative Maintenance-lube/oil (Variable Expense): Annual cost $1,000.00

A. Formula: Total payments annually $1,000.00 divided by miles driven for the year

1. $1,000.00 divided by 36000 miles equals .02 cents per mile*
2. $1,000.00 divided by 39360 miles equals .02 cents per mile*
3. $1,000.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge, Speedco Truck Lube and tire

In my experience, the industry standard for the regularity of oil changes and other lube work is every 8-10,000 miles. Thus, I assumed approximately 4 oil changes per year. In my experience, each service for trucks of the type driven by Class Members is $300 to $400 per year. However, to give Exel the benefit of the doubt, I assumed a cost of only $250 per oil change service.

14. Repairs-major repairs/tow truck/truck parts (Variable Expense): Annual cost $5,000.00-lower end range of expense. Example replace motor $15,000.00-$20,000.00, replace rear end gears $4,500.00-$5,000.00

A. Formula: Total payments annually $5000.00 divided by miles driven for the year

1. $5,000.00 divided by 36000 miles equals .13 cents per mile*
2. $5,000.00 divided by 39360 miles equals .12 cents per mile*
3. $5,000.00 divided by 42000 miles equals .11 cents per mile*

Source: Personal knowledge

In my experience, commercial truck operators typically set aside a fund for the expenses associated with major repairs. Some replacement parts and major repairs can run as much as $18,000 (such as a new motor), while other repairs, a rear-end gears, axle gears—that are as low as $5,000 or less (such as rear-end axle gears). I know this because in the course of my consulting business I have reviewed hundreds of maintenance and repair records for commercial trucks, and have advised operators as to whether to pay the cost of a repair or to simply purchase a new vehicle. In my experience, commercial truck operators typically have to replace at least one important part or have at least one major repair done per year. To give Exel the benefit of the doubt, I assumed expenses of only $5,000.

15. Laborer wages (lumper/helper (Variable Expense): Annual Cost $24,000.00 (at $100.00 per day

A. Formula: Total payments annually $24,000.00 divided by miles driven for the year

1. $24,000.00 divided by 36000 miles equals .66 cents per mile*
2. $24,000.00 divided by 39360 miles equals .60 cents per mile*
3. $24,000.00 divided by 42000 miles equals .57 cents per mile*

Deposition testimony from Class Members and Exel managers in this case indicates that each Driver had at least one helper per truck, and paid their helpers at a rate of $100 per day, at a minimum. Testimony also indicates that some Class Members had higher labor costs because they also enlisted the help of second drivers and additional helpers. Thus, labor costs of $24,000.00 per year represent the low end of the range of labor costs. (To the extent Class Members drive less than 5 days, both sides of this equation might decrease.)

16. Payroll taxes for lumper/helper (Variable Expense): Annual cost $2,300.00 (Based on $24,000.00 per year)

A. Formula: Total payments annually $2,300.00 divided by miles driven for the year

1. $2,300.00 divided by 36000 miles equals .06 cents per mile*
2. $2,300.00 divided by 39360 miles equals .05 cents per mile*
3. $2,300.00 divided by 42000 miles equals .05 cents per mile*

Source: Jackson & Eklund-an accounting firm in McKinleyville California

I also consulted with the accounting firm Jackson & Eklund to determine how much it would cost annually to pay payroll taxes for employees who earned a total of $24,000 per year. The accounting firm gave me a cost breakdown as follows: $374.00 for Medicare, $238.00 for state unemployment taxes, $126.00 for payments under the Federal Unemployment Tax Act (FUTA), and $1,600.00 for social security. This worked out to $2,338.00 per year. To give Exel the benefit of the doubt, I rounded down to $2,300.00 per year.

17. Misc. expenses and losses: Annual costs $1,500.00

A. Formula: Total payments annually $1,500.00 divided by miles driven for the year

1. $1,500.00 divided by 36000 miles equals .04 cents per mile*
2. $1,500.00 divided by 39360 miles equals .03 cents per mile*
3. $1,500.00 divided by 42000 miles equals .03 cents per mile*

This figure is based on my personal experience reviewing expenses records for owner-operators of commercial trucks. This is a variable cost because it is dependent on the number of traffic and parking tickets operators receive during a year. In my experience, a traffic ticket in California amounts to a $200 expense, at a minimum. It is not unusual for commercial truckers to receive more than two traffic tickets per year. In addition, it is not unusual for commercial truckers to receive more than 20 parking tickets in a year. Parking tickets ordinarily amount to an expense of $60 per ticket. Other miscellaneous expenses include cleaning (full service car wash), which costs approximately $20-25.00 per wash.

Thus, my estimate of $1,500 per year for parking and traffic tickets, among other miscellaneous expenses, is on the low end of the range.

18. Depreciation-Annual Cost:

A. Formula: Average of reimbursement rates from 2008 through 2014

2008 21 cents per mile

2009 21 cents per mile

2010 23 cents per mile

2011 22 cents per mile

2012 23 cents per mile

2013 23 cents per mile

2014 22 cents per mile

Average .22 cents per mile for the 7 years 2008-2014

Source: IRS

I used Internal Revenue Service estimates for mileage reimbursement rates for depreciation of commercial trucks of the type driven by Class Members.

fraction of a cent was lowered to next whole cent-example .038 cents was lowered to .03 cents

Dated: August 28, 2015

Wesley B. Curtis Jr.

Exhibit A

COMMERCIAL TRUCK CONSULTING

RESUME

Wesley B. Curtis Jr.

Owner-Commercial Truck Consulting, LLC

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www.truckcompliance.com

Owner-Commercial Truck Consulting, LLC

Professional Experience

July 1, 1974 - Joined the California Highway Patrol-4 month CHP academy

July 1, 1975 – Received Certificate of Training from the Department of Industry Relations-State of California.

February 11, 2007 – Received Certificate of Attainment for "VIN" (Vehicle Identification Number) Officer training, class 2-77 CHP academy-40 hours

April 6, 1977 – Commission on Peace Officer Standards of Training (POST) "Basic Certificate"

December 1, 1986 – Commission on Peace Officer Standards of Training (POST) "Intermediate Certificate"

December 1, 1986 – Commission on Peace Officer Standards of Training (POST) "Advanced Certificate"

March 10, 1989 – Received Certificate of Attainment for "Commercial Enforcement" training, CHP academy-80 hours academy- 30 days in-field

March 18, 1992 – Received Certificate of Attainment for "Radar Training class, CHP academy-40 hours

June 2, 1992 – California Specialized Training-"First Responder Operational for Hazardous Material"-8 hours

April 30, 1999 – U.S. Department of Transportation "General Hazardous Material" training-40 hours

June 9, 2000 – U.S. Department of Transportation "Cargo Tank/Bulk Packaging" training

September 15, 2000 – Received Certificate of Attainment "Techniques of Accident Investigation #1" CHP academy-40 hours

February 16, 2001 – U.S. Department of Transportation “North American Standard Level 1, “Train the Trainer”-40 hours

August 17, 2001 – U.S. Department of Transportation “Motor Coach Inspector” course-40 hours

February 9, 2005 – Certificate of Appreciation from California Trucking Association (CTA) for working with the trucking industry

April 18, 2006 – Certificate of Completion “Compliance with Federal Motor Carrier Safety Regulations” from Oregon Trucking Association-8 hours

May 22, 2006 – Certificate of Completion “Long Combination Vehicle” training from Oregon Trucking Association-8 hours

June 21, 2006 – Certificate of Completion “Supervisor Drug and Alcohol Awareness” training from Oregon Trucking Association-4 hours

June 21, 2006 – Certificate of Completion “Hazardous Material Transportation” training from Oregon Trucking Association-8 hours

October 17, 2006 – Certificate of Completion “Federal Motor Carrier Safety Regulations-Hour of Service” from Oregon Trucking Association-8 hours

February 13, 2007 - Certificate of Achievement “Incident Command System” training from Josephine County Emergency Management-4 hours

February 20, 2007 - Certificate of Achievement “National Incident Management System (NIMS) from FEMA-4 hours

November 14, 2007 – Certificate of Achievement “9-12 Career Awareness Instructor” training from Clackamas Community College-8 hours

October 22, 2007 – Certificate of Achievement “Transportation Customer Service Skills Instructor” training from Clackamas Community College-8 hours

February 29, 2008 – Certificate of Achievement "Master Instructor Certificate for Professional Truck Driver Certification" from Clackamas Community College-40 hours

September 15th-19th, 2008-Total Station Survey Instrument & Mapping Training-Seattle PD-40 hours

October 21, 2008 – Certificate of Professional Enrichment "Supervisor Force Liability Prevention" training-8 hours

May 5-8th, 2009 – Certificate of Completion "Oregon Regional Forensic Academy-32 hours

June 12, 2009 – Western State Auto Theft Investigators-2009 Heavy Equipment Investigation Training-8 hours

August 26-27th, 2009-Certificate of Training "Cold Case Analysis Training for Law Enforcement and Prosecutors-16 hours

November 2009-BLS/Heart Saver-First Aid/CPR/AED instructors course-Providence Hospital, Medford Oregon.

November 29-Dec 3rd, 2010-Certificate of Training "Interview and Interrogation" course, WRCTC-Shelton Washington-40 hours

February 28th 2012, FMCSR Appendix "G", Vehicle Inspection training by DEKRA-4 hours.

March 28th 2012, Legal Considerations by Attorney Daniel Armagh-Director of Legal Education, Fox Valley Technical College-8 hours

October 23rd-25th 2013, Bendix Air Brake System training program in operation and maintenance of "Heavy Duty' vehicles-Sparks Nevada-24 hours

December 16-17th, 2014, Hazardous Material Instructors course, Portland Oregon. 16 hours

August 11th, 2015-Claims Conference of Northern California-Speaker for Low Ball and Lynch in regards to accident prevention and accident Investigation. 2 hours

OTHER TRAINING

During my 30 year career with the California Highway Patrol I also received the following training:

- Emergency Medical Technician
- Use of PAS (Preliminary Alcohol Screening Device)
- CPR Instructor
- Drug Recognition Expert
- Radar
- Accident Investigation
- Commercial Vehicle Enforcement

INSTRUCTOR

1999-2002: Instructor for the CHP-Commercial Vehicle Training Program in Gilroy and Temecula California

1999-2002: Instructor for Northern Division (CHP) Commercial Division teaching road patrol officers in Commercial Road Enforcement

2012-Present: Instructor for Oregon Trucking Association in the following area:

a. Hours of Service
b. Federal Motor Carrier Safety Regulations
c. Hazardous Material
d. Accident Prevention and Civil Liability

EDUCATION

1968 – Graduate: Happy Camp High School, Happy Camp California

1982 – Graduate: Santa Rosa Junior College, Arts of Science Degree in "Administration of Justice"

ASSIGNMENTS

1974-1978 CHP – Academy and Santa Fe Springs CHP office
1978-1979 CHP – Southern Division, Los Angeles
1979-1982 CHP – Marin CHP office
1982-1983 CHP – Santa Rosa CHP office
1983-1999 CHP – Weaverville CHP office (Willow Creek Resident Post)
1999-2004 CHP – Northern Division (Humboldt CHP office)
July 3rd 2004 – Retired from California Highway Patrol

EXPERT WITNESS

Qualified as an expert witness in the various (State and Federal) Judicial Systems in:

- Accident Investigation
- Drug/Alcohol Violations
- Commercial Vehicle Inspections/Violations
- Provided expert witness testimony in commercial vehicle traffic accidents and investigations.
- California Vehicle Code
- Title 13 California of Regulations
- 49 CFR (Code of Federal Regulations)
- Standard of Care

From 1989 to 2002 I was a MRE (Mobile Road Enforcement Officer). My responsibilities were to do "on-road" inspections of commercial motor vehicles as well as operate 2 platform inspections facilities (weigh stations) on S.R 299 and U.S. 101 in northwestern California.

I have inspected over 10,000 commercial motor vehicles over my career.

I have investigated over 5,000 traffic accidents and over 500 commercial vehicle traffic accidents in my career.

I currently assist attorneys in civil litigation in accidents or events involving commercial motor vehicles. I do investigative work, provide information/research and testify at depositions as well as trials.

SECONDARY EMPLOYMENT

1986 to 1996-Owner of Curtis & Company Pools in Willow Creek Ca.

Sept. 2005 to May 2012 – Major Crimes Unit Detective for the Josephine County Sheriff's Office in Grants Pass Oregon (part-time position).

March 2008 to Present – Independent contractor for Thorn Valley Enterprises which conducts inspections for trucking company (liability insurance and loss prevention surveys).

a. Liability Reviews-Mock DOT audits

March 2012 to Present-Independent contractor for Dekra Automotive North America, Inc. as a Commercial Vehicle & Fleet Services Inspector.

a. Inspect commercial motor vehicles

October 2013 to Present-Independent contractor for J.J. Keller & Associates, Inc. as a "Safety Consultant".

a. Mock DOT audits
b. CHP BIT audits
c. Review policies and procedures
d. Write Safety Management Plans

ASSOCIATIONS

Member-California Association of Highway Patrol

Member-Oregon Trucking Association
Member-California Trucking Association
(2009-2014 Director of the Redwood Empire Unit)
President-California Trucking Association-Redwood Empire Unit 2015
Member-Safety, Security & Human Resource Committee-California Trucking Association
Member-American Legion

BUSINESS

I started Commercial Truck Consulting, LLC business in May of 2006. The business was started with the idea of helping the trucking industry stay in compliance with the numerous and often times complex state and federal rules and regulations. I also do investigative work in other areas of accidents/incidents related to motor vehicles and testify in truck accident ligation as a "truck expert".

I provide training to the trucking industry in the following areas:

A. Biennial Inspection of Terminal (BIT) program.
B. Drug and Alcohol program.
C. Hours of service-Intrastate and Interstate.
D. Hazardous Material-Initial and Reoccurring.
E. Fork Lift-OSHA.
F. Long Combination Vehicle Training.
G. Entry Level Driver Training.
H. Cargo Securement.
I. Pre/Post Trip Inspection, DVIR's (Daily Vehicle Inspection Reports).
J. California DMV CDL training (pre-trip and obstacle course).
K. Driver Safety Training (company training schedule).
L. DOT Compliance (Federal).
M. "Train the Trainer" for driver's
N. Vehicle Inspections
O. Operation of commercial motor vehicles/rules of the road

I also perform company safety audits for state and federal compliance as well as write policies for companies. Below are examples those policies:

A. Cell Phone
B. Hours of Service

C. Accident Investigation
D. Accident Procedures
E. Drug and Alcohol
F. Seat Belt
G. Driver Fatigue

My goal, regardless of whom I represent is to make the highways as safe as possible for all who travel them.

Wesley B. Curtis Jr., Owner
Commercial Truck Consulting, LLC

Exhibit B

Commercial Truck Consulting LLC

Fee Schedule for 2015

1. Hourly fee of $200.00 dollars per hour (partial day) or $1600.00 (full day-8 hours) per employee of Commercial Truck Consulting, LLC.

2. Court/Deposition prep shall be billed at $275.00 per hour.

3. Time spent at a deposition or at court for testimony in a case shall be billed at $350.00 per hour. **MIMINUM 3 hours charge**

4. Per Diem shall be $250.00 a day-per person (motel/meals).

5. Travel Time is $100.00 per hour (from Grants Pass Or. To location and return)

6. Flight, car rental costs, taxi cab fares, etc. will be borne by the company as charged to Commercial Truck Consulting, LLC.

7. Any addition costs will be borne by company as charged to Commercial Truck Consulting LLC

Wes Curtis, Owner
Commercial Truck Consulting LLC

Exhibit C

Commercial Truck Consulting, LLC
Deposition Testimony

AMS Law P.C.
Aaron Owada
1711 South Jackson Street
Seattle Washington 98144

A. OSHA violations
B. Tacoma Moving and Storage dba TMS Motor Freight vs State of Washington
C. Investigation
D. Testify at OSHA appeal hearing

Blumberg Law Corporation
444 W. Ocean Blvd., #1500
Long Beach Ca. 90802

A. Plaintiff-Stewart vs Mendoza
B. Dock Fall
C. Deposition

The Davis Law Firm
Tim Davis
625 Market Street, 12th floor
San Francisco Ca. 94105
415-278-1400

A. Plaintiff- Truck vs 5 Vehicles-Speed/Brakes
B. DeLello vs Button Transportation
C. Deposition

James Emerson
Emerson, Sorensen & Church
2520 W. Shaw Lane, Suite 102
Fresno, Calif. 93711
559-432-7641

A. Defendant-Dang vs Xu
B. Traffic accident-triple fatal
C. Truck vs Truck-Truck vs Car
D. Investigation
E. Deposition

David Kleczek Law Office
David Kleczek
825 Washington Street, Suite 301
Oakland Ca. 94607-4709
510-391-4055

A. Plaintiff -Armor Car vs Van/Lane change
B. Hector Harris v. Loomis Fargo & Company- Alexander Tarnasky
C. Deposition

Commercial Truck Consulting, LLC
Deposition Testimony

Law Firm of McLaughlin & Associates, Inc.
Tricia Hue, Paralegal
15 Oregon Ave, Suite 210
Tacoma Wa. 98409

A. Plaintiff-Truck Vs Car/Lane Change
B. Maria L. Miles V Jayde A. Lovelan, John Doe Loveland, VFS Leasing Corp.
C. Deposition

Lewis Brisbois Bisgaard & Smith LLP
650 East Hospitality Lane, Suite 600
San Bernardino Calif. 92408
909-387-1130

A. Defendant-Paul Ramstad vs National Railroad Corporation
B. Personal Injury-Fall
C. Investigation
D. Deposition

Low, Ball & Lynch

1. Dale Allen
505 Montgomery Street, 7th Floor
San Francisco Ca.

A. Defendant
B. Kramer vs Pepsi-Truck Dooring/Bicyclist
C. Deposition/Testify in court

2. Co-counsel for James Emerson
A. Defendant-Dang vs Xu
B. Triple fatal-truck vs car
C. Investigation
D. Deposition

Morales Law Office
Mariano Morales, Attorney
1200 Chesterly Drive
Suite 180
Yakima, Wa 98902

A. Plaintiff-Toney vs Holt, Les Schwab and Swaggart Brothers
B. Wheel Off
C. Investigation & Deposition

Stritmatter, Kessier, Whelan & Coluccio

1. Ray Kahler, Attorney
413 Eight Street
Hoquiam, Wa 98550

Commercial Truck Consulting, LLC
Deposition Testimony

A. Plaintiff-Truck vs Car/Unsafe Backing
B. Barnum vs Brundage-Bone Concrete
C. Deposition

2. Kevin Coluccio, Attorney
200 Second Ave W.
Seattle, Wa 98119

A. Plaintiff-Caffery
B. Deposition

Rossi Vucinovich PC
James Vucinovich
1000 Second Ave., Suite 1610
Seattle WA 98104
425-646-8003

A. Plantiff-Ahnberg vs BNSF Railway Company
Bisson vs BNSF Railway Company

B. Ahnberg-injury lifting- "Liftgate"
B1-Deposition

C.Bisson-injury from defective truck seat
C1. Investigation & Reports
C2. Deposition
C3. Deposition-Bisson case
C4. Trial Testimony-Federal court-Spokane Washington-Bisson

D. Plaintiff-Stokes vs BNSF Railway Company
D1. Injured leg
D2. Investigation and truck inspection

EXHIBIT B

Amended Expert Report of Wesley B. Curtis Jr.

Owner-Commercial Truck Consulting, LLC

In the Matter of

Villalpando, et al v. Exel Direct, Inc., et al.

October 30, 2015

On September 28, 2015, the Court ordered Plaintiffs to submit amended expert reports by October 30, 2015. I am submitting the following Amended Expert Report. I have updated my report to consider evidence produced by Exel since I submitted my original Expert Report on August 28, 2015. I reserve the right to modify or augment this report further as may be necessary or appropriate to address any information received at a future date or to address expert opinion that may be proffered on behalf of Exel in this case.

Introduction:

My original report opined on the average cost per mile of operating the type of truck described by Exel's standard truck requirements, and broke the average costs per mile into different categories of expenses.

To reach these figures, I drew upon my years of experience in the trucking industry. My experience has included performing cost analyses for clients of my Commercial Truck Consulting business, examining vehicle maintenance programs, conducting mock DOT audits and truck inspections, and calculating cost-per-mile figures for expense reimbursement purposes on the trucks I have owned and operated, among other experience.

In addition, I researched truck prices, fuel prices over a six year period, average miles per gallon, insurance price quotes, workers compensation insurance premiums, license and permitting costs, toll costs, cell phone costs, and maintenance costs, among other costs that are incurred in making deliveries according to the procedures and specifications described in Exel's materials.

I have reviewed several documents produced by Exel in this litigation, including Exel's standard truck requirements; Exel's compliance manual; Exel's own cost-benefit analyses generated to assess the financial implications of transitioning to an independent contractor Driver model; and documents generated by Exel showing estimated annual driver operating expenses, among other documents pertaining to driver out-of-pocket expenses.

I found that in total, drivers operating the type of trucks driven by class members in this case incur approximately $2.12 in expenses per mile, at 36,000 miles driven annually. This result is consistent with Exel's own projections, as provided by Exel in discovery.

I am now updating my report to consider new evidence that the Court ordered Exel to produce after I submitted my original report. These documents are "Delivery Specialist Annual Operating Expenses" for twenty of Exel's locations in California. In deposition, Exel's Vice President of Operations testified that these reports contain Exel's own calculations of the cost to drivers of operating a vehicle at each of the twenty locations.

I have analyzed Exel's calculations of the expenses class members would incur at several California locations as a point of comparison to my figures. As discussed in more detail below, the costs per mile calculations that Exel presented to its clients average approximately $2.09 per mile. This is similar to my figure of $2.12 per mile at 36,000 miles per year.

The similarities between Exel's numbers and my own show that Exel's calculations for its customers are consistent with my own years of experience and expert opinion on the costs of operating the trucks described by Exel's materials. Moreover, the similarity between Exel's calculations and my figures corroborates my expert opinion and experience that there is a generally accepted method for calculating, and a typical range of out-of-pocket costs for drivers who operate the types of trucks at issue in this matter (i.e., 26-foot box trucks weighing over 10,000 pounds).

Qualifications:

I have been operating the consulting firm Commercial Truck Consulting, LLC, since May 2006. My firm provides regulatory compliance consultation to trucking companies, as well as expert witness services in civil litigation regarding accident investigation and other matters. My resume is attached as Exhibit A to this Report.

One portion of my business is inspecting commercial motor vehicles. To perform an inspection, I must take equipment to the job site. I operate a vehicle over 10,000 pounds GVWR (gross vehicle weight rating).

In order to properly pass on the costs of the operation of my company vehicle, I do a "cost per mile" analysis so I know what it costs to operate my company vehicle and then pass that cost on to the customer either as a mileage cost or an hourly rate to charge for travel.

I have owned two other businesses in the past: a video arcade (8 years) and a swimming pool business (10 years). In both instances I had company vehicles and had to factor in "cost per mile" to reach an accurate calculation of my vehicle operation expenses, which in turn was used in preparation of bids or monthly service contracts to customers.

Another facet of my business is conducting mock "DOT audits" for trucking companies. The mock audit is designed to simulate the regulatory compliance audits conducted by the Department of Transportation. As part of the DOT audit, I must examine all defects on a vehicle, demonstrate how defects will be repaired, review vehicle maintenance files and supporting documents, and inform my clients when they must replace tires and parts, among other things.

As part of this process, I have examined hundreds of vehicle maintenance programs for compliance and have examined thousands of work orders, purchase orders, invoices, and parts bills of sale. The trucks involved in these audits are typically the same type of truck as those described by Exel in this case, in terms of size and weight. Thus, I am familiar with the costs and frequency of repairs, maintenance, and other types of upkeep, for the type of commercial truck at issue in this case.

My company also offers information on California regulations. I field several calls per week from trucking companies throughout the United States about the CARB (California Air Resources Board) smog rules. One of the items we often discuss is the cost of retro-fitting older power units (94-2006 models) with a Particulate Matter filter (average cost of a PM filter $15,000.00) and the worth of the existing power unit (i.e. does it make sense to retro-fit the older power unit?). In providing this service, I ascertain how long the company plans on keeping the vehicles, the current values of the vehicles, what it will cost per mile to pay for the PM filter, among other costs.

As a result, I have extensive personal knowledge of the costs of bringing a commercial truck into compliance with California regulatory standards, as well as the costs of operating a commercial truck in California as a general matter.

Fee Schedule:

My fee schedule, which contains information regarding my hourly rates of compensation for work performed on this case is attached as Exhibit B to this Report. By way of summary, my hourly rates in this case are: 1) $100/hr for travel; 2) $200/hr for research, conferences, consultation with the client, reviewing documents, organizing documents, analysis, testing, responding to discovery requests, report and writing; 3) $250/hr for preparation for court appearance or for being deposed; 4) $350/hr for giving testimony in court or in deposition; and 5) a $250 per diem.

Publications Authored and Expert Witness Experience:

I have not authored any publications in the past 10 years.

In the past four years, I have provided expert testimony in deposition in several cases. A list of the attorneys for whom I have provided expert testimony and the cases in which the testimony was requested is attached as Exhibit C to this report.

Assignment:

I have been retained by Plaintiff's Counsel, Schneider Wallace Cottrell Konecky Wotkyns LLP, in the Villalpando, et al. v. Exel Direct, Inc., et al. case, to serve as a trucking expenses expert. Specifically, I have been asked to opine on the cost per mile of operating a commercial truck of the type operated by the Class Members in this case. To determine a reasonable cost of operation on a per mile basis, I have segregated operations costs into categories of fixed and variable expenses. I used various data and my own extensive experience in the trucking industry and as a trucking regulatory compliance consultant to determine a reasonable cost per mile for each category of expenses.

Methodology:

In preparing this report, I reviewed the following documents: Plaintiffs' Consolidated First Amended Complaint; Defendants' Answer and Affirmative Defenses; Exel's regulatory compliance manual; Exel's standard truck requirements; a document identifying the specifications of the truck driven by one of the two named Plaintiffs (Daniel Villalpando); Exel's own cost-benefit analyses generated to assess the financial implications of transitioning to an independent contractor Driver model; documents generated by Exel showing estimated annual driver operating expenses; documents generated by Exel showing estimated annual driver net earnings after expenses; a spreadsheet prepared by Exel and produced in this litigation showing aggregate compensation and deductions for each Class Member; and Exel's Department of Transportation Regulations Powerpoint presentation.

I also reviewed deposition testimony of Class Member witnesses and Exel's managers concerning the amounts of days Class Members worked per week, the amounts of miles they drove per day, and the amounts of money they paid to their helpers.

Since August 28, 2015, I have reviewed twenty documents that Exel produced after I submitted my provisional report. The documents are bates stamped as follows:

1. Living Spaces #1 Oakland-EDV109796
2. Living spaces #2 Rialto-EDV111627
3. WS LA-EDV109798
4. IKEA No Cal SFR-CCD-EDV109799
5. IKEA No Cal SFR-LCDE & PA-EDV109800
6. IKEA-No Cal-SFR-LCD SAC-EDV109801
7. Sears West #1-EDV109804,
8. Sears West #2-EDV109805
9. Hooker-EDV111628
10. William Sonoma #1-EDV111629
11. William Sonoma #2-EDV111630
12. Pier 1-EDV111631
13. Arhaus-EDV111632
14. Bo Concept-EDV111633
15. Appliance Connections-EDV11634
16. Hon-EDV111635
17. HH Gregg-EDV111636

18. Humble-EDV111637
19. Mid Continent-EDV11163
20. Global-EDV111639

Each of the documents is titled "Delivery Specialist Annual Operating Expenses."

My understanding is that Plaintiffs became aware of these documents during the deposition of Kenneth Mangen, Exel's Vice President of Operations. Counsel for Plaintiffs informed me that they had to move the Court to compel production of these documents from Exel and that Exel completed its production of the documents on October 9, 2015, after the Court granted Plaintiffs' motion compel their production on August 17, 2015.

I also have reviewed the deposition testimony of Mr. Mangen. Based on his testimony, I understand that these 20 documents were among those Exel submitted to potential clients in California, in connection with requests for proposal. Mr. Mangen testified that Exel relies on information provided by a potential client, its own experience in the business, and the aid of computer programs to "model" the costs of operating a vehicle and making deliveries (such as fuel and labor) incurred by Exel's drivers at the various locations.

My review of the documents and of Mr. Mangen's deposition testimony indicates that the documents contain Exel's own projected costs for 20 service locations, regarding several of the different categories of expenses that I included in my original report.

To be clear, my cost-per-mile expenses figures have not changed since I submitted my provisional report and reviewed Exel's numbers. I have simply considered Exel's calculations as a point of comparison and have found that they corroborate my own figures.

In my calculations of "cost per mile" reimbursement rates, I used the following truck as an exemplar:

- Used 2012 International 4300, 2 axle,

- 254” wheel base
- Mileage 94,000 miles
- Diesel power, automatic transmission
- 26 foot box truck
- 96” wide
- Power lift gate-3000 pound capacity
- Roll up door
- Side door
- Cost $48,000.00-used

I used this truck as an exemplar because it is typical of the type and size of box truck used by the Class Members in this case. I have reviewed Exel’s “Standard Truck Requirements,” which reflect that Class Members operate a similar type of truck. This means it is reasonable to assume each class member incurred similar costs (on a per mile basis) associated with maintaining and operating the truck. I have used Exel’s “Standard Truck Requirements” as a benchmark for my calculations.

For the computations listed below, I used a “cost per mile” calculator in an Excel spreadsheet format.

As described below, some expenses are fixed yearly costs associated with owning and operating a commercial truck, regardless of days worked or miles driven. Other expenses may vary according to the amount of miles driven, the amount of days worked, and geographical location, among other factors. In such cases, I have used the lower end of the range to give Exel the benefit of the doubt.

As a general matter, whenever the data or documents I reviewed indicates a range of costs for a particular category of expenses, I used the lower end of the range to calculate the mileage reimbursement rate for that category.

Calculating driving and operating expenses by breaking them down into the fixed and variable component costs as listed below and determining a per mile rate for each fixed and variable cost component based on yearly costs and miles driven is a generally accepted way in which companies and regulators in the transportation industry determine costs and expenses. Trucking companies regularly use these methods for purposes of determining projected profit and loss. Government agencies also use similar methodologies for tax purposes. For example, the IRS calculates expense reimbursement rates for driving vehicles by taking into account similar fixed and variable costs. As indicated by the summary of my research and methodology in this report, the component and aggregate costs also are verifiable by basic empirical research and investigation (e.g. historical prices of gas or miles per gallon for 26 foot box trucks, etc.) As I also discuss in this report, the methodology I have used to determine driving and operation costs are verifiable by comparing them to the figures that Exel calculates for its own clients and customers throughout California.

Categories used to compute cost per mile of operation:

For my cost per mile analysis most but not all categories were used. Some did not apply in this scenario

FIXED COSTS:

Fixed costs expenses are costs a person entails just for owning a commercial motor vehicle. It doesn't matter if the commercial motor vehicle is sitting or moving. There is a daily cost of ownership of the vehicle regardless of what the vehicle is doing.

Operational Fixed Expenses:

Yearly Truck payment- Public Liability and Property Damage insurance premiums
Bobtail/Deadhead (truck) insurance premiums
Cargo insurance premiums
Primary Medical insurance premiums
Workers Compensation insurance premiums
License and registration
Permits

VARIABLE COSTS:

Variable costs are expenses that are directly related to operating a commercial motor vehicle. Normally the more miles the commercial motor vehicle is operated the higher the costs will be. Fuel, tires, maintenance, and meals and lodging are examples of variable costs.

Operational Variable Expenses:

Truck Fuel
Meals or per diem meal expense
Telephone
Tolls

Tires-11R22.5-6 tires
Preventative Maintenance-service at 10,000 miles X 5
Repairs (replacing a truck part) and tow truck services
Laborer Wages (total paid to laborer working for you)
Payroll Taxes for employee laborer
Taxes: Road, Fuel, Property, Federal highway use
Misc Expenses and Losses

Days Worked, Miles Driven, and Fuel Costs:

Testimony from Exel managers and recruiters, as well as policy and other documents produced by Exel in this litigation indicate that Drivers typically worked from 5 to 6, and sometimes 7 days per week, although there may be some Drivers who work part time as well. Exel's own internally-generated estimates indicate that Class Members worked for an average of 260 days per year. I also note that the calculations contained in Exel's "Delivery Specialist Annual Operating Expenses" documents described above are 258-260 workdays per year. However, to allow for Class Members who worked less than five days per week, I am using 240 days per year.

Some documents produced by Exel indicate that delivery drivers at some locations drove 200 or more miles per day, and as many as 300 miles per day at other locations. In addition, the "Delivery Specialist Annual Operating Expenses" described above contain Exel's calculations of projected annual miles at 20 locations in California. I noticed that one of the 20 documents contains an extraordinarily high annual mileage figure. To avoid skewed results, I excluded that mileage figure from my comparison. To give Exel the benefit of the doubt, I also excluded the lowest annual mileage figure contained in the documents from my comparison. The average daily mileage figure across the remaining 18 locations was 188 miles per day.

In addition, Mr. Mangen, a high-ranking Exel executive, testified that Drivers in California typically drove 125-200 miles per day. "iDirect" data produced in this litigation by Exel covering many California locations indicates an average of 164 miles driven per day. 164 miles per day is also very close to the midpoint of Mr. Mangen's range.

Taking into account these figures, I performed three sets of calculations: one assuming 150 miles per day, another assuming 164 miles per day, and another assuming 175 miles per day. To the extent the drivers drove less than 150 miles per day, the per-mile rate would actually increase. My 150 mile category is near the middle of the lower end of Mr. Mangen's range, my 164 mile category is close to the median of Mr. Mangen's range and equal to the average indicated by Exel's own "iDirect" data, and the 175 mile category is near the middle of the higher end of Mr. Mangen's range.

As discussed above, Exel's own average annual mileage projection across the 18 California locations represented in Exel's "Delivery Specialist Annual Operating Expenses" documents (excluding the two with the highest and lowest annual mileage figures) was 188 miles per day, which is similar to the daily mileage figures that I used.

To determine average cost of fuel per gallon for the diesel fuel required by the type of truck driven by Class Members in this case, I queried the U.S. Energy Information Administration Petroleum & Other Liquids website to obtain the mean fuel price of such diesel fuel from 2009 through 2014.

Weekly Retail Gasoline and Diesel Prices

(Dollars per Gallon, Including Taxes)

Area: California **Period:** Annual

Download Series History Definitions, Sources & Notes

Show Data By: ◉ **Product** ○ **Area**	**GraphClear**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**View History**
Gasoline - All Grades	☐	2.725	3.138	3.863	4.081	3.933	3.794	2000-2014
All Grades - Reformulated Areas	☐	2.725	3.138					1995-2010
Regular	☐	2.678	3.091	3.817	4.034	3.886	3.745	2000-2014
Reformulated Areas	☐	2.678	3.091					1995-2010

Midgrade	☐	2.785	3.200	3.924	4.141	3.994	3.857	2000-2014
Reformulated Areas	☐	2.785	3.200					1995-2010
Premium	☐	2.888	3.302	4.026	4.244	4.098	3.963	2000-2014
Reformulated Areas	☐	2.888	3.302					1995-2010
Diesel (On-Highway) - All Types	☐	2.607	3.157	NA	4.230	4.126	4.004	1995-2014
Ultra Low Sulfur (15 ppm and Under)	☐	**2.607**	**3.157**	**4.084**	**4.230**	**4.126**	**4.004**	2007-2014

Data points:

a. 150 miles per day times 240 work days per year=36000 miles annually

b. 164 miles per day times 240 work days per year=39360 miles annually

c. 175 miles per day times 240 work days a year=42000 miles annually

d. Computed Fixed expenses on a yearly bases-2012

e. Computed Variable expenses on a yearly basis-2012

f. Computed diesel fuel prices of a 6 year average (2009-2014) $3.96 per gallon

I also note that Exel's fuel price figures contained in "Delivery Specialist Annual Operating Expenses" described above are similar to the fuel price numbers I provide here. The average fuel price calculated by Exel across the 19 locations that actually calculated a fuel price figure was approximately $3.70 per gallon, and among the 19 locations, 10 locations calculated a fuel price figure of $4.00 or higher.

Findings:

Based on my extensive experience calculating cost-per-mile expenses in the course of running my own businesses and operating my own truck, inspecting hundreds of trucks, reviewing purchase orders, maintenance records, and regulatory documents in the course of providing consulting services, conducting hundreds of accident investigations, and my examination of

Exel's written policies, the testimony of its managers and executives, and Exel's own standard truck requirements, I have reached the following cost per mile calculations:

Cost Per-Mile Breakdown:

1. Fuel (Variable Expense): 8-10 miles per gallon.

Truck size:	**22'/26' Truck**	
Fuel Type:	**Diesel**	**Gasoline**
MPG Average:	**8**	**6**

Source: Penske (largest renter of box trucks)

The nation's leading truck rental company estimates that the types of box trucks used by Class Members in this case get 8 miles per gallon. In my personal experience and working with numerous trucking companies, I have come across slightly higher MPG figures for similar box trucks. Thus, to give Exel the benefit of the doubt, I have assumed that the box trucks driven by Class Members get, on average, 10 miles to the gallon.

I also note that Exel's figures contained in the "Delivery Specialist Annual Operating Expenses" documents described above are 7-8 miles per gallon. Thus, my figures of total fuel costs are actually somewhat more favorable to Exel's position than their own, because my figures assume that vehicles would not have to be refueled as frequently as Exel's indicate.

A. Formula: 36,000 miles operate divided by mpg-miles per gallon (10) equals 3600 gallons of fuel per year. 42,000 miles divided by 10 mpg equals 4200 gallons of fuel per year.

B. 3600 gallons of fuel times $3.96 (cost of fuel per gallon) equals $14,256.00 yearly expense

3936 gallons of fuel times $3.96 (cost of fuel per gallon) equals $15,586.56 yearly expense

4200 gallons of fuel times $3.96 (cost of fuel per gallon equals $16,632.00 yearly expense

C. Divide annual cost of fuel by miles traveled for the year and it gives you cost per mile

1. $14,256.00 divided by 36000 miles equals .39 cents per mile
2. $15,586.56 divided by 39360 miles equals .39 cents per mile*[1]
3. $16,632.00 divided by 42000 miles equals .39 cents per mile*

I note this is less than the $1,500 per month average fuel cost estimate provided by Exel through discovery in the document entitled "Realistic Preview of Business Opportunity."

[1] The "*" symbol indicates that a fraction of a cent was rounded down to the next whole cent—for example .038 cents was lowered to .03 cents

2. Truck Payment (Fixed Expense): 2012 purchase price $48,000.00, 72 months a 10% interest equals $955.93 monthly payments

A. Formula: Total payments annually $11,471.16 divided by miles driven for the year

1. $11471.16 divided by 36000 miles equals .31 cents per mile*
2. $11471.16 divided by 39360 miles equals .29 cents per mile*
3. $11471.16 divided by 42000 miles equals .27 cents per mile*

Source: Overdrive Magazine July 2012 Alicia Collster, Finance Manager at Arrow Truck Sales, Atlanta location. Interest rates for trucks was 10-30%

The amount of monthly truck payments is determined by the purchase price and financing plan of each truck operated by a Class Member. As an exemplar, I selected the above 2012 used truck meeting Exel's Standard Truck Requirements. The specifications of the exemplar truck are listed above. To give Exel the benefit of the doubt, I selected a used vehicle as an exemplar. The monthly payments would be considerably higher if the truck in question was purchased new.

Interest rates for such vehicles in 2012 ranged from approximately 10 to 30%. To give Exel the benefit of the doubt, I assumed a 10% rate of interest in my calculations.

I note that Exel's truck payment calculations contained in the "Delivery Specialist Annual Operating Expenses" documents described above are somewhat higher than my numbers. Exel's range of truck payment calculations across the twenty locations was $1,000-$1,600 per month, as compared to my figure of $955.93 per month. If anything, my figures are more favorable to Exel than their own in this category.

3. Truck Insurance-$5,000,000.00 (Fixed Expense): Annual cost $2,000.00

A. Formula: Total payments annually $2,000.00 divided by miles driven for the year

1. $2,000.00 divided by 36000 miles equals .05 cents per mile*
2. $2,000.00 divided by 39360 miles equals .05 cents per mile*
3. $2,000.00 divided by 42000 miles equals .04 cents per mile*

Based on documents produced by Exel in this litigation, Exel requires truck insurance meeting a $5,000,000 coverage threshold. Thus, I reviewed a range of insurance listings offered by vendors, for truck insurance meeting the $5,000,000 policy threshold. I then took the average annual cost of such coverage for each year from 2008 to 2015, and identified an annual average cost for all 8 years.

The $2,000 annual cost is comparable to the annual amount of deductions to payments charged by Exel for liability insurance in those cases where Exel provided the liability insurance to drivers directly, and then deducted the cost from their payment. I know this because I reviewed driver compensation and deductions data produced by Exel in this litigation.

4. Cargo Insurance-$3,000,000.00 (Fixed Expenses): Annual cost $3,000.00

A. Formula: Total payments annually $3,000.00 divided by miles driven for the year

1. $3,000.00 divided by 36000 miles equals .08 cents per mile*
2. $3,000,00 divided by 39360 miles equals .07 cents per mile*
3. $3,000.00 divided by 42000 miles equals .07 cents per mile*

To identify yearly cargo insurance costs, I looked at price quotes for the leading insurance companies that provide cargo insurance coverage for commercial truckers. The annual cost listed here is based on an average of current insurance quotes from the leading insurance providers.

I note that Exel's calculations of insurance costs contained in the "Delivery Specialist Annual Operating Expenses" documents described above do not appear to distinguish between Cargo insurance and Truck insurance. I am operating under the assumption that Exel has included cargo insurance in their yearly "truck insurance" premium. This gives Exel the benefit of the doubt because it assumes that Exel has taken into account the cost of Cargo insurance in its expenses figures, rather than leaving it out entirely. If this assumption is not correct, then Exel would have failed to include the cost of cargo insurance in its insurance cost calculations, which would increase Exel's total cost-per-mile number beyond its current threshold.

Nevertheless, under this assumption, Exel's calculations of insurance costs range from just under $9,000 per year to over $11,000 per year. By comparison, my figure of $5,000 per year for both truck insurance (including the $2,000 yearly cost set forth category #3, above) and cargo insurance is actually lower than Exel's. In my experience, insurance premiums are based on the value of the vehicle, the value of the cargo, the citation history of the driver, and the accident history of the driver. I reached my figure based on these considerations, and my own experience performing cost analyses for my clients. In my expert opinion, my figures are in line with the industry standard, and Exel's cost figures are well in excess of the industry standard. In any case, my figures appear to be more favorable to Exel than their own in this category.

5. Medical Insurance-Single person (Fixed Expense): Annual cost $3,427.00 per year

A. Formula: Total payments annually $3,470.00 divided by miles driven for the year

1. $3,427.00 divided by 36000 miles equals .09 cents per mile*
2. $3,427.00 divided by 39360 miles equals .08 cents per mile*
3. $3,427.00 divided by 42000 miles equals .08 cents per mile*

Source: Health Insurance Marketplace, Covered California Website

I calculated medical insurance costs by using California's state exchange website (Covered California) to identify the annual cost of the most inexpensive health insurance plan available, providing for basic coverage.

6. Workers Compensation Insurance Premium (Fixed Expense): Annual cost $5,774.00 based on wages of helper

A. Formula: Total payments annually $5774.00 divided by miles driven for the year

1. $5,774.00 divided by 36000 miles equals .16 cents per mile*
2. $5,774.00 divided by 39360 miles equals .15 cents per mile*
2. $5,774.00 divided by 42000 miles equals .14 cents per mile*

Source: Jackson & Eklund-an accounting firm in McKinleyville California

I requested that an accounting firm assist me in determining the annual cost of workers compensation insurance, assuming Class Members supplied premiums for their assistant laborers each year. Based on Exel's own estimates as to the Class Members' costs of hired help, as well as the testimony of Class Members, I assumed that each Class Member employed a helper, and each helper was paid $100 per day. This was on the low end of what Class Members testified regarding how much they paid their helpers.

I worked with the accounting firm to survey 99 small companies. The average workers compensation insurance premium for these companies was approximately 25% of gross wages. Assuming gross annual wages of $24,000 for each helper, this worked out to the total annual payments listed above.

I also note that Exel's calculations of the annual costs of workers compensation insurance premiums, as presented in the "Delivery Specialist Annual Operating Expenses" documents, are comparable to my figures, and are somewhat higher than my figures in some locations.

7. License/Registration/CVRA (Fixed Expenses): Annual cost $1,200.00

A. Formula: Total payments annually $1,200.00 divided by miles driven for the year

1. $1,200.00 divided by 36000 miles equals .03 cents per mile*
2. $1,200.00 divided by 39360 miles equals .03 cents per mile*
3. $1,200.00 divided by 42000 miles equals .02 cents per mile*

Source: California Department of Motor Vehicles, and personal knowledge

In California, there are fixed licensing, registration, and Commercial Vehicle Registration fees. These fixed costs have not changed appreciably throughout the class period (2008 to 2015). To reach these figures, I spoke with a contact at the California Department of Motor Vehicles, who provided cost information for license and registration for commercial trucks in California. I am also familiar with these costs because I personally pay them, and pay them directly for some of my clients.

I note that Exel's calculations of the annual costs of license and registration fees, as presented in the "Delivery Specialist Annual Operating Expenses" documents, are somewhat lower than my figures. However, based on my experience advising clients in California as to license and registration costs for trucks similar to those driven by the class members, I am confident that my numbers are in line with the industry standard.

8. Permits-MCP, Truck Inspection, UCRA (Fixed Expense): Annual cost $292.00

A. Formula: Total payments annually $240.00 divided by miles driven for the year

1. $292.00 divided by 36000 miles equals .01 cents per mile*
2. $292.00 divided by 39360 miles equals .01 cents per mile*
3. $292.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge

In California, there is an annual truck inspection fee of $90.00. The motor carrier permit costs $120.00 per year. California commercial truckers also must obtain a Unified Motor Carrier Registration, which costs $82 per year. As an operator of a commercial motor vehicle, I am familiar with these costs because I pay them on an annual basis. In addition, there are other regulatory fees associated with operating a commercial truck.

In addition, my consulting company provides offers a "full-service" option to trucking companies, so in many instances I have to pay these fees for my clients directly. Thus, I am familiar with the average annual cost of permits, inspections, and registrations for commercial motor vehicle operators.

9. Meals (Variable Expense): Annual cost $1,200 ($5.00 per day)

A. Formula: Total payments annually $1,200.00 divided by miles driven for the year

1. $1,200.00 divided by 36000 miles equals .03 cents per mile*
2. $1,200.00 divided by 39360 miles equals .03 cents per mile*
3. $1,200.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge-bring lunch from home or stopping at fast food

Meal costs are variable according to trucker preference and geographical availability. I used a per-day meal costs estimate on the low end of the range. Five dollars is the approximate cost of a modest lunch prepared at home, or of a small meal purchased at an inexpensive truck stop or fast food restaurant.

10. Cell Phone (Variable Expense): Annual cost $1000.00 (phone/text/internet)

A. Formula: Total payments annually $1,000.00 divided by miles driven for the year

1. $1,000.00 divided by 36000 miles equals .02 cents per mile*
2. $1,000.00 divided by 39360 miles equals .02 cents per mile*
3. $1,000.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal Knowledge, CALPIRG Winter 2012-Consumers Guide to a new cellphone plan

As an operator of a small business, I use a smartphone with online capabilities. I have reviewed documents produced by Exel in this litigation indicating that each Class Member had to use a cell phone with internet data capabilities. According to the CALPIRG Consumer's Guide, the cost of monthly cellular smartphone service (including a digital data plan) in 2012 ranged from $60 to $180 per month. To give Exel the benefit of the doubt, I used a number on the lower end of the range (about $83 per month).

I also note that Exel's calculations of the annual communication costs, as presented in the "Delivery Specialist Annual Operating Expenses" documents, ranged from $1,200 to just under $1,500. Thus, my figures are comparable to Exel's in this category. If anything, my figures are more favorable to Exel's position than their own numbers in this category.

11. Toll Roads/Bridges (Variable Expenses): Annual cost $1,560.00

A. Formula: Total payments annually $1,560.00 divided by miles driven for the year

1. $1,560.00 divided by 36000 miles equals .04 cents per mile*
2. $1,560.00 divided by 39360 miles equals .03 cents per mile*
3. $1,560.00 divided by 42000 miles equals .03 cents per mile*

Source: Personal Knowledge, Bay Area Toll authority, Tollroads.com

Toll road and bridge fees are variable costs because they depend on geographic area and routes assigned. For example, there may be higher toll costs in the Bay Area because of higher bridge tolls. While tolls could reach $10-15 per day in areas like the Bay area, they could be as a small as $5 or less per day in areas like Los Angeles, particularly if deliveries are confined to a small radius. To give Exel the benefit of the doubt, I assumed a rate of $6 per day, the lower end of the range.

12. Tires-11R22.5 6 tires-1 set per year (Variable Expense): Annual cost $1,350.00

A. Formula: Total payments annually $1,350.00 divided by miles driven for the year

1. $1,350.00 divided by 36000 miles equals .03 cents per mile*
2. $1,350.00 divided by 39360 miles equals .03 cents per mile*
3. $1,350.00 divided by 42000 miles equals .03 cents per mile*

Source: Loves Truck Stop, Tire easy.com

In my personal experience with my own vehicle, and my experience reviewing the maintenance records of hundreds of trucks in my capacity as a commercial trucking consultant, commercial truck operators must purchase approximately 2 sets of tires per year, per truck, depending on how many miles they drive. Tires on the vehicles meeting Exel's "standard truck requirements" (11R22.5 tires) cost approximately $225 per tire. In my experience, while some commercial motor vehicle operators operate more than one truck, and may have to replace their tires for each truck on multiple occasions per year, some operate only one truck, and may only have to replace their tires once per year. Thus, to give Exel the benefit of the doubt, I assumed that on average, Class Members had to replace six tires per year. $225 multiplied by 6 tires (one set) works out to an annual cost of $1,350.00.

13. Preventative Maintenance-lube/oil (Variable Expense): Annual cost $1,000.00

A. Formula: Total payments annually $1,000.00 divided by miles driven for the year

1. $1,000.00 divided by 36000 miles equals .02 cents per mile*
2. $1,000.00 divided by 39360 miles equals .02 cents per mile*
3. $1,000.00 divided by 42000 miles equals .02 cents per mile*

Source: Personal knowledge, Speedco Truck Lube and tire

In my experience, the industry standard for the regularity of oil changes and other lube work is every 8-10,000 miles. Thus, I assumed approximately 4 oil changes per year. In my experience, each service for trucks of the type driven by Class Members is $300 to $400 per year. However, to give Exel the benefit of the doubt, I assumed a cost of only $250 per oil change service.

14. Repairs-major repairs/tow truck/truck parts (Variable Expense): Annual cost $5,000.00-lower end range of expense. Example replace motor $15,000.00-$20,000.00, replace rear end gears $4,500.00-$5,000.00

A. Formula: Total payments annually $5000.00 divided by miles driven for the year

1. $5,000.00 divided by 36000 miles equals .13 cents per mile*
2. $5,000.00 divided by 39360 miles equals .12 cents per mile*
3. $5,000.00 divided by 42000 miles equals .11 cents per mile*

Source: Personal knowledge

In my experience, commercial truck operators typically set aside a fund for the expenses associated with major repairs. Some replacement parts and major repairs can run as much as $18,000 (such as a new motor), while other repairs, a rear-end gears, axle gears—that are as low as $5,000 or less (such as rear-end axle gears). I know this because in the course of my consulting business I have reviewed hundreds of maintenance and repair records for commercial trucks, and have advised operators as to whether to pay the cost of a repair or to simply purchase a new vehicle. In my experience, commercial truck operators typically have to replace at least one important part or have at least one major repair done per year. To give Exel the benefit of the doubt, I assumed expenses of only $5,000.

Adding together the annual costs for tires in category # 12, above ($1,350), preventative maintenance in category #13, above ($1,000) and repairs in category #14, above ($5,000), results in a total yearly maintenance cost of approximately $7,350.00 per year.

By comparison, Exel's calculations of the annual maintenance costs, as presented in the 18 "Delivery Specialist Annual Operating Expenses" documents that I analyzed in this category, ranged from just under $4,000 per year to just over $8,600 per year.

It is unclear to me whether Exel's calculations take into account the costs of major repairs. If not, then Exel's "maintenance" figures are higher than $2,350 (my figure of $1,000 per year for preventative maintenance, in combination with my figure of $1,350 per year for tires, as explained above). To the extent Exel's calculations did take the costs of major repairs into account, they would be lower than my figures for the aggregate annual cost of maintenance, repairs, replacement parts, and tires.

Regardless of whether Exel's calculations of maintenance costs include the costs of tires, preventative maintenance, and repairs, I believe my figures more accurately reflect the average cost of yearly repairs and maintenance. In my experience, most truck drivers typically set aside approximately $5,000 per year for major repairs, which alone exceeds Exel's calculations of annual maintenance costs at some locations.

15. Laborer wages (lumper/helper (Variable Expense): Annual Cost $24,000.00 (at $100.00 per day

A. Formula: Total payments annually $24,000.00 divided by miles driven for the year

1. $24,000.00 divided by 36000 miles equals .66 cents per mile*
2. $24,000.00 divided by 39360 miles equals .60 cents per mile*
3. $24,000.00 divided by 42000 miles equals .57 cents per mile*

Deposition testimony from Class Members and Exel managers in this case indicates that each Driver had at least one helper per truck, and paid their helpers at a rate of $100 per day, at a minimum. Testimony also indicates that some Class Members had higher labor costs because they also enlisted the help of second drivers and additional helpers. Thus, labor costs of $24,000.00 per year represent the low end of the range of labor costs. (To the extent Class Members drive less than 5 days, both sides of this equation might decrease.)

Exel's calculations of the annual cost of laborer wages, as presented in the "Delivery Specialist Annual Operating Expenses" documents, ranged from $25,800 to $32,250, as compared to my figure of $24,000. Thus, my figures are comparable to Exel's. If anything, my figures are more favorable to Exel's position than their own figures in this category.

16. Payroll taxes for lumper/helper (Variable Expense): Annual cost $2,300.00 (Based on $24,000.00 per year)

A. Formula: Total payments annually $2,300.00 divided by miles driven for the year

1. $2,300.00 divided by 36000 miles equals .06 cents per mile*
2. $2,300.00 divided by 39360 miles equals .05 cents per mile*
3. $2,300.00 divided by 42000 miles equals .05 cents per mile*

Source: Jackson & Eklund-an accounting firm in McKinleyville California

I also consulted with the accounting firm Jackson & Eklund to determine how much it would cost annually to pay payroll taxes for employees who earned a total of $24,000 per year. The accounting firm gave me a cost breakdown as follows: $374.00 for Medicare, $238.00 for state unemployment taxes, $126.00 for payments under the Federal Unemployment Tax Act (FUTA), and $1,600.00 for social security. This worked out to $2,338.00 per year. To give Exel the benefit of the doubt, I rounded down to $2,300.00 per year.

By comparison, Exel's calculations of the annual cost of payroll taxes, as presented in the "Delivery Specialist Annual Operating Expenses" documents, ranged from just under $2,600 per year to over $3,500. I believe their figures are higher than mine because Exel also used higher figures for daily laborer wages and working days per year. In any event, my figures are more favorable to Exel's position than their own in this category.

17. Misc. expenses and losses: Annual costs $1,500.00

A. Formula: Total payments annually $1,500.00 divided by miles driven for the year

1. $1,500.00 divided by 36000 miles equals .04 cents per mile*
2. $1,500.00 divided by 39360 miles equals .03 cents per mile*
3. $1,500.00 divided by 42000 miles equals .03 cents per mile*

This figure is based on my personal experience reviewing expenses records for owner-operators of commercial trucks. This is a variable cost because it is dependent on the number of traffic and parking tickets operators receive during a year. In my experience, a traffic ticket in California amounts to a $200 expense, at a minimum. It is not unusual for commercial truckers to receive more than two traffic tickets per year. In addition, it is not unusual for commercial truckers to receive more than 20 parking tickets in a year. Parking tickets ordinarily amount to an expense of $60 per ticket. Other miscellaneous expenses include cleaning (full service car wash), which costs approximately $20-25.00 per wash.

Thus, my estimate of $1,500 per year for parking and traffic tickets, among other miscellaneous expenses, is on the low end of the range.

18. Depreciation-Annual Cost:

A. Formula: Average of reimbursement rates from 2008 through 2014

2008 21 cents per mile

2009 21 cents per mile

2010 23 cents per mile

2011 22 cents per mile

2012 23 cents per mile

2013 23 cents per mile

2014 22 cents per mile

Average .22 cents per mile for the 7 years 2008-2014

Source: IRS

I used Internal Revenue Service estimates for mileage reimbursement rates for depreciation of commercial trucks of the type driven by Class Members.

Summary of Findings:

Aggregate Cost Per-Mile Breakdown:

In aggregate, my calculations of the total cost per-mile, split into my three mileage categories, are as follows:

1. At 36000 miles: $2.12 per mile*
2. At 39360 miles: $1.98 per mile*
3. At 42000 miles: $1.88 per mile*

I note that these figures take into account the costs of truck payments, but do not take into account the costs of depreciation, even though I have provided a cost-per mile figure for each, above.[2] They also do not take into account the cost of meals, even though I have provided a cost-per-mile figure for meals, above.

[2] Alternatively, if we take into account the costs of depreciation, but not truck payments, then the aggregate costs per mile would be $2.03 at 36,000 miles per year, $1.91 at 39,360 miles per year, and $1.83 at 42,000 miles per year. I understand that Plaintiffs' economic expert, David Breshears, used the depreciation costs rather than the truck payments, in his calculations. The reason I used truck payments rather than depreciation to show the aggregate totals in the text above is because Exel's "Delivery Specialist Annual Operating Expenses" documents generally calculate truck payment rather than depreciation costs, and therefore doing so here might make it easier to compare my figures with Exel's. However, if depreciation rather than truck payments

I reached these figures based on my own extensive experience operating trucks and calculating cost-per-mile figures for expense reimbursement purposes, conducting mock DOT audits and truck inspections, performing cost analyses for clients of my Commercial Truck Consulting business, and examining vehicle maintenance programs, among other things. I also researched several secondary sources to obtain precise figures for the numerous types expenses that individuals operating the types of trucks typically driven by class members in this case must generally incur. In addition, I reviewed the deposition testimony of Exel's employees regarding the amount of miles class members typically drive, the amount of days they typically work, and analyzed documents produced by Exel in this litigation regarding the types and amount of expenses they typically incur.

Comparison with Exel's Figures:

My final cost-per-mile figures are similar to the figures contained in Exel's own cost-benefit analyses generated to assess the financial implications of transitioning to an independent contractor Driver model and documents generated by Exel showing estimated annual driver operating expenses, which I analyzed in preparing my expert report.

As an additional point of comparison, the average of Exel's calculations of aggregate costs per mile across the 18 locations represented in the "Delivery Specialist Annual Operating Expenses" documents (removing the bids with the highest and lowest mileage on either end, as described above), is $2.09. The average across all 20 locations in these documents is $2.07.

Exel's figures are only slightly lower than my figure of $2.12, at 36,000 annual miles. This corroborates my analysis.

Moreover, it appears that Exel's calculations do not include some of the categories of expenses that I did include in my figures, such as major repairs.

One final note in the comparison is that my figures are based on a lower number of annual miles than Exel's. As discussed above, I performed three sets of calculations—one at 36,000 annual miles (150 miles per work day), another at 39,360 annual miles (164 miles per work day), and another at 42,000 annual miles (175 miles per work day), based on testimony from Exel's witnesses and its iDirect data. Exel's "Delivery Specialist Annual Operating Expenses" documents, however, project annual miles that average 48,521 per year (after removing the two bids with the highest and lowest mileage figures.) The potential significance of this difference is shown by the following illustration: multiplying my cost per mile figure of $2.12 by my annual miles figure of 36,000 works out to $76,320.00 in total costs. By comparison, Exel's cost-per-mile figure of $2.09 multiplied by its annual miles figure of 48,521 works out to $101,408.89, which is higher than my total costs figure. Thus, even though Exel's cost per mile average is slightly lower, its projected cost figures on an annual basis actually tend to be higher than mine.

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are used, the aggregate costs per mile in my report are actually lower than those in Exel's documents. Again, it is my understanding that Mr. Breshears used the depreciation costs, rather than truck payment costs, in his calculations.

Nevertheless, the fact that Exel's cost-per-mile figures are similar to mine corroborates the reasonableness of my calculations as to the typical costs of driving and operating a truck to make deliveries for Exel.

Dated: October 30, 2015

Wesley B. Curtis Jr.

Exhibit A

RESUME

Wesley B. Curtis Jr.

Owner-Commercial Truck Consulting, LLC

Wesley B. Curtis Jr.
390 Daleo Drive
Grants Pass, Oregon 97527
(541) 761-8619
commercialtruckconsulting@msn.com
www.truckcompliance.com

Owner-Commercial Truck Consulting, LLC

Professional Experience

July 1, 1974 - Joined the California Highway Patrol-4 month CHP academy

July 1, 1975 – Received Certificate of Training from the Department of Industry Relations-State of California.

February 11, 2007 – Received Certificate of Attainment for “VIN” (Vehicle Identification Number) Officer training, class 2-77 CHP academy-40 hours

April 6, 1977 – Commission on Peace Officer Standards of Training (POST) “Basic Certificate”

December 1, 1986 – Commission on Peace Officer Standards of Training (POST) “Intermediate Certificate”

December 1, 1986 – Commission on Peace Officer Standards of Training (POST) “Advanced Certificate”

March 10, 1989 – Received Certificate of Attainment for “Commercial Enforcement” training, CHP academy-80 hours academy- 30 days in-field

March 18, 1992 – Received Certificate of Attainment for “Radar Training class, CHP academy-40 hours

June 2, 1992 – California Specialized Training-“First Responder Operational for Hazardous Material”-8 hours

April 30, 1999 – U.S. Department of Transportation “General Hazardous Material” training-40 hours

June 9, 2000 – U.S. Department of Transportation “Cargo Tank/Bulk Packaging” training

September 15, 2000 – Received Certificate of Attainment “Techniques of Accident Investigation #1” CHP academy-40 hours

February 16, 2001 – U.S. Department of Transportation "North American Standard Level 1, "Train the Trainer"-40 hours

August 17, 2001 – U.S. Department of Transportation "Motor Coach Inspector" course-40 hours

February 9, 2005 – Certificate of Appreciation from California Trucking Association (CTA) for working with the trucking industry

April 18, 2006 – Certificate of Completion "Compliance with Federal Motor Carrier Safety Regulations" from Oregon Trucking Association-8 hours

May 22, 2006 – Certificate of Completion "Long Combination Vehicle" training from Oregon Trucking Association-8 hours

June 21, 2006 – Certificate of Completion "Supervisor Drug and Alcohol Awareness" training from Oregon Trucking Association-4 hours

June 21, 2006 – Certificate of Completion "Hazardous Material Transportation" training from Oregon Trucking Association-8 hours

October 17, 2006 – Certificate of Completion "Federal Motor Carrier Safety Regulations-Hour of Service" from Oregon Trucking Association-8 hours

February 13, 2007 - Certificate of Achievement "Incident Command System" training from Josephine County Emergency Management-4 hours

February 20, 2007 - Certificate of Achievement "National Incident Management System (NIMS) from FEMA-4 hours

November 14, 2007 – Certificate of Achievement "9-12 Career Awareness Instructor" training from Clackamas Community College-8 hours

October 22, 2007 – Certificate of Achievement "Transportation Customer Service Skills Instructor" training from Clackamas Community College-8 hours

February 29, 2008 – Certificate of Achievement "Master Instructor Certificate for Professional Truck Driver Certification" from Clackamas Community College-40 hours

September 15th-19th, 2008-Total Station Survey Instrument & Mapping Training-Seattle PD-40 hours

October 21, 2008 – Certificate of Professional Enrichment "Supervisor Force Liability Prevention" training-8 hours

May 5-8th, 2009 – Certificate of Completion "Oregon Regional Forensic Academy-32 hours

June 12, 2009 – Western State Auto Theft Investigators-2009 Heavy Equipment Investigation Training-8 hours

August 26-27th, 2009-Certificate of Training "Cold Case Analysis Training for Law Enforcement and Prosecutors-16 hours

November 2009-BLS/Heart Saver-First Aid/CPR/AED instructors course-Providence Hospital, Medford Oregon.

November 29-Dec 3rd, 2010-Certificate of Training "Interview and Interrogation" course, WRCTC-Shelton Washington-40 hours

February 28th 2012, FMCSR Appendix "G", Vehicle Inspection training by DEKRA-4 hours.

March 28th 2012, Legal Considerations by Attorney Daniel Armagh-Director of Legal Education, Fox Valley Technical College-8 hours

October 23rd-25th 2013, Bendix Air Brake System training program in operation and maintenance of "Heavy Duty' vehicles-Sparks Nevada-24 hours

December 16-17th, 2014, Hazardous Material Instructors course, Portland Oregon. 16 hours

August 11th, 2015-Claims Conference of Northern California-Speaker for Low Ball and Lynch in regards to accident prevention and accident Investigation. 2 hours

OTHER TRAINING

During my 30 year career with the California Highway Patrol I also received the following training:

- Emergency Medical Technician
- Use of PAS (Preliminary Alcohol Screening Device)
- CPR Instructor
- Drug Recognition Expert
- Radar
- Accident Investigation
- Commercial Vehicle Enforcement

INSTRUCTOR

1999-2002: Instructor for the CHP-Commercial Vehicle Training Program in Gilroy and Temecula California

1999-2002: Instructor for Northern Division (CHP) Commercial Division teaching road patrol officers in Commercial Road Enforcement

2012-Present: Instructor for Oregon Trucking Association in the following area:

a. Hours of Service
b. Federal Motor Carrier Safety Regulations
c. Hazardous Material
d. Accident Prevention and Civil Liability

EDUCATION

1968 – Graduate: Happy Camp High School, Happy Camp California

1982 – Graduate: Santa Rosa Junior College, Arts of Science Degree in "Administration of Justice"

ASSIGNMENTS

1974-1978 CHP – Academy and Santa Fe Springs CHP office
1978-1979 CHP – Southern Division, Los Angeles
1979-1982 CHP – Marin CHP office
1982-1983 CHP – Santa Rosa CHP office
1983-1999 CHP – Weaverville CHP office (Willow Creek Resident Post)
1999-2004 CHP – Northern Division (Humboldt CHP office)
July 3rd 2004 – Retired from California Highway Patrol

EXPERT WITNESS

Qualified as an expert witness in the various (State and Federal) Judicial Systems in:

- Accident Investigation
- Drug/Alcohol Violations
- Commercial Vehicle Inspections/Violations
- Provided expert witness testimony in commercial vehicle traffic accidents and investigations.
- California Vehicle Code
- Title 13 California of Regulations
- 49 CFR (Code of Federal Regulations)
- Standard of Care

From 1989 to 2002 I was a MRE (Mobile Road Enforcement Officer). My responsibilities were to do "on-road" inspections of commercial motor vehicles as well as operate 2 platform inspections facilities (weigh stations) on S.R 299 and U.S. 101 in northwestern California.

I have inspected over 10,000 commercial motor vehicles over my career.

I have investigated over 5,000 traffic accidents and over 500 commercial vehicle traffic accidents in my career.

I currently assist attorneys in civil litigation in accidents or events involving commercial motor vehicles. I do investigative work, provide information/research and testify at depositions as well as trials.

SECONDARY EMPLOYMENT

1986 to 1996-Owner of Curtis & Company Pools in Willow Creek Ca.

Sept. 2005 to May 2012 – Major Crimes Unit Detective for the Josephine County Sheriff's Office in Grants Pass Oregon (part-time position).

March 2008 to Present – Independent contractor for Thorn Valley Enterprises which conducts inspections for trucking company (liability insurance and loss prevention surveys).

a. Liability Reviews-Mock DOT audits

March 2012 to Present-Independent contractor for Dekra Automotive North America, Inc. as a Commercial Vehicle & Fleet Services Inspector.

a. Inspect commercial motor vehicles

October 2013 to Present-Independent contractor for J.J. Keller & Associates, Inc. as a "Safety Consultant".

a. Mock DOT audits
b. CHP BIT audits
c. Review policies and procedures
d. Write Safety Management Plans

ASSOCIATIONS

Member-California Association of Highway Patrol

Member-Oregon Trucking Association
Member-California Trucking Association
(2009-2014 Director of the Redwood Empire Unit)
President-California Trucking Association-Redwood Empire Unit 2015
Member-Safety, Security & Human Resource Committee-California Trucking Association
Member-American Legion

BUSINESS

I started Commercial Truck Consulting, LLC business in May of 2006. The business was started with the idea of helping the trucking industry stay in compliance with the numerous and often times complex state and federal rules and regulations. I also do investigative work in other areas of accidents/incidents related to motor vehicles and testify in truck accident ligation as a "truck expert".

I provide training to the trucking industry in the following areas:

A. Biennial Inspection of Terminal (BIT) program.
B. Drug and Alcohol program.
C. Hours of service-Intrastate and Interstate.
D. Hazardous Material-Initial and Reoccurring.
E. Fork Lift-OSHA.
F. Long Combination Vehicle Training.
G. Entry Level Driver Training.
H. Cargo Securement.
I. Pre/Post Trip Inspection, DVIR's (Daily Vehicle Inspection Reports).
J. California DMV CDL training (pre-trip and obstacle course).
K. Driver Safety Training (company training schedule).
L. DOT Compliance (Federal).
M. "Train the Trainer" for driver's
N. Vehicle Inspections
O. Operation of commercial motor vehicles/rules of the road

I also perform company safety audits for state and federal compliance as well as write policies for companies. Below are examples those policies:

A. Cell Phone
B. Hours of Service

C. Accident Investigation
D. Accident Procedures
E. Drug and Alcohol
F. Seat Belt
G. Driver Fatigue

My goal, regardless of whom I represent is to make the highways as safe as possible for all who travel them.

Wesley B. Curtis Jr., Owner
Commercial Truck Consulting, LLC

Exhibit B

Commercial Truck Consulting LLC

Fee Schedule for 2015

1. Hourly fee of $200.00 dollars per hour (partial day) or $1600.00 (full day-8 hours) per employee of Commercial Truck Consulting, LLC.

2. Court/Deposition prep shall be billed at $275.00 per hour.

3. Time spent at a deposition or at court for testimony in a case shall be billed at $350.00 per hour. **MIMINUM 3 hours charge**

4. Per Diem shall be $250.00 a day-per person (motel/meals).

5. Travel Time is $100.00 per hour (from Grants Pass Or. To location and return)

6. Flight, car rental costs, taxi cab fares, etc. will be borne by the company as charged to Commercial Truck Consulting, LLC.

7. Any addition costs will be borne by company as charged to Commercial Truck Consulting LLC

Wes Curtis, Owner
Commercial Truck Consulting LLC

Exhibit C

Commercial Truck Consulting, LLC
Deposition Testimony

AMS Law P.C.
Aaron Owada
1711 South Jackson Street
Seattle Washington 98144

A. OSHA violations
B. Tacoma Moving and Storage dba TMS Motor Freight vs State of Washington
C. Investigation
D. Testify at OSHA appeal hearing

Blumberg Law Corporation
444 W. Ocean Blvd., #1500
Long Beach Ca. 90802

A. Plaintiff-Stewart vs Mendoza
B. Dock Fall
C. Deposition

The Davis Law Firm
Tim Davis
625 Market Street, 12th floor
San Francisco Ca. 94105
415-278-1400

A. Plaintiff- Truck vs 5 Vehicles-Speed/Brakes
B. DeLello vs Button Transportation
C. Deposition

James Emerson
Emerson, Sorensen & Church
2520 W. Shaw Lane, Suite 102
Fresno, Calif. 93711
559-432-7641

A. Defendant-Dang vs Xu
B. Traffic accident-triple fatal
C. Truck vs Truck-Truck vs Car
D. Investigation
E. Deposition

David Kleczek Law Office
David Kleczek
825 Washington Street, Suite 301
Oakland Ca. 94607-4709
510-391-4055

A. Plaintiff -Armor Car vs Van/Lane change
B. Hector Harris v. Loomis Fargo & Company- Alexander Tarnasky
C. Deposition

Commercial Truck Consulting, LLC
Deposition Testimony

Law Firm of McLaughlin & Associates, Inc.
Tricia Hue, Paralegal
15 Oregon Ave, Suite 210
Tacoma Wa. 98409

A. Plaintiff-Truck Vs Car/Lane Change
B. Maria L. Miles V Jayde A. Lovelan, John Doe Loveland, VFS Leasing Corp.
C. Deposition

Lewis Brisbois Bisgaard & Smith LLP
650 East Hospitality Lane, Suite 600
San Bernardino Calif. 92408
909-387-1130

A. Defendant-Paul Ramstad vs National Railroad Corporation
B. Personal Injury-Fall
C. Investigation
D. Deposition

Low, Ball & Lynch

1. Dale Allen
505 Montgomery Street, 7th Floor
San Francisco Ca.

A. Defendant
B. Kramer vs Pepsi-Truck Dooring/Bicyclist
C. Deposition/Testify in court

2. Co-counsel for James Emerson
A. Defendant-Dang vs Xu
B. Triple fatal-truck vs car
C. Investigation
D. Deposition

Morales Law Office
Mariano Morales, Attorney
1200 Chesterly Drive
Suite 180
Yakima, Wa 98902

A. Plaintiff-Toney vs Holt, Les Schwab and Swaggart Brothers
B. Wheel Off
C. Investigation & Deposition

Stritmatter, Kessier, Whelan & Coluccio

1. Ray Kahler, Attorney
413 Eight Street
Hoquiam, Wa 98550

Commercial Truck Consulting, LLC
Deposition Testimony

A. Plaintiff-Truck vs Car/Unsafe Backing
B. Barnum vs Brundage-Bone Concrete
C. Deposition

2. Kevin Coluccio, Attorney
200 Second Ave W.
Seattle, Wa 98119

A. Plaintiff-Caffery
B. Deposition

Rossi Vucinovich PC
James Vucinovich
1000 Second Ave., Suite 1610
Seattle WA 98104
425-646-8003

A. Plantiff-Ahnberg vs BNSF Railway Company
Bisson vs BNSF Railway Company

B. Ahnberg-injury lifting- "Liftgate"
B1-Deposition

C.Bisson-injury from defective truck seat
C1. Investigation & Reports
C2. Deposition
C3. Deposition-Bisson case
C4. Trial Testimony-Federal court-Spokane Washington-Bisson

D. Plaintiff-Stokes vs BNSF Railway Company
D1. Injured leg
D2. Investigation and truck inspection

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CASE NO. 3:12-cv-04137-JCS

CASE NO. 4:13-cv-03091-JCS

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT INC.; DPWN HOLDINGS (USA), INC.; DEUTSCHE POST BETEILIGUNGEN HOLDING GMBH

Defendants.

EXPERT REPORT OF DAVID BRESHEARS, CPA/CFF

I. Introduction

1. The opinions expressed in this report are my present opinions subject to the following reservations. Amendments or additions to this report may be required as a result of developments prior to or at trial, including, but not limited to, the discovery of new evidence, expert discovery, and the testimony of any other witness in deposition or at trial.

2. I anticipate using at trial selected exhibits attached to this report, documents reviewed in connection with their preparation, enhanced graphic versions of selected exhibits included in this report (i.e., redrafted to improve their presentation quality) and additional graphics illustrating concepts described in this report.

II. Assignment

3. I have been retained by counsel for the Plaintiffs in the matter of Daniel Villapando, et al. ("Plaintiffs") v. Exel Direct Inc., et al. ("Defendants"). Defendants utilized Plaintiffs to deliver products to customers throughout California. Plaintiffs have alleged that they were misclassified as independent contractors, and as such, (1) were not properly compensated for all hours worked (including minimum wage violations), (2) were not properly compensated for all overtime hours worked, (3) were not properly reimbursed for employment-related expenses and were improperly deducted wages to cover certain costs, (4) were not provided proper meal periods, (5) were not permitted proper rest periods, and (6) are entitled to penalties and interest.

4. I have been asked to calculate the amount of potential damages, including penalties and interest, for the Plaintiffs due to Defendants' alleged California wage and hour violations. The damage period extends back four years (i.e., June 14, 2008) from the filing of the complaint under the California Labor Code and the Business and Professions Code 17200. I may also make observations regarding timekeeping records, driving logs, and testimony as they pertain to Plaintiffs' claims concerning meal periods, rest breaks, and improper wage compensation.

5. I have also been asked to calculate the amount of potential damages, including penalties, for the PAGA represented individuals due to Defendants' alleged violations of California Labor Code. The PAGA statute of limitations extends back one year (i.e., July 3, 2011) from the filing of the complaint.

III. Summary of Expert Qualifications

6. I am a Certified Public Accountant, licensed in the State of California, and Certified in Financial Forensics. I am currently a partner at Hemming Morse, LLP, CPAs, Forensic and Financial Consultants. My work in the accounting profession includes experience as an auditor and as a consultant. My expert qualifications, including my testimony, are described in **Exhibit A** hereto.

7. I have consulted on and/or testified in over 120 matters involving wage and hour-related disputes, including those arising under the FLSA and the California Labor Code. These matters have involved allegations of unpaid overtime, off-the-clock work, meal and rest break violations, employment misclassification, time shaving, record keeping violations, and unreimbursed business expenses.

8. My firm has been compensated for my review and analysis in this matter at my standard hourly rate of $400 per hour. Others have assisted me in my work and my firm has been compensated for their work at their standard hourly rates.

IV. Summary of Opinions

9. I have calculated the following amount of potential damages, including penalties and interest, for 387 Plaintiffs in the data produced thus far[1]:

Estimated Damages: Based on $30.00 Per Hour Wage Rate	Damages	Interest	Penalties	Total
Estimated Expenses Due	$ 62,388,932	$ 26,219,389		$ 88,608,322
Estimated Overtime Hours Worked (Premiums Due)	$ 9,496,000	$ 4,107,582		
Estimated Double Time Hours Worked (Premiums Due)	$ 546,536	$ 193,239		
	$ 10,042,536	$ 4,300,821		$ 14,343,357
Meal Period Wages Due	$ 5,557,654	$ 2,346,668		$ 7,904,322
Rest Period Wages Due	$ 5,612,569	$ 2,368,259		$ 7,980,827
	$ 11,170,223	$ 4,714,927		$ 15,885,150
Minimum Wage Violations - Type 1: Unpaid Hours Per Day	$ 597,271	$ 251,467		$ 848,738
Minimum Wage Violations - Type 2: Net Wages / Hours < Minimum Wage	*Incomplete*	*Incomplete*		*Incomplete*
	$ 597,271	$ 251,467		$ 848,738
Subtotal: Estimated Wages Due	$ 21,810,030	$ 9,267,215		$ 31,077,245
Estimated Total Wages and Expenses Due	$ 84,198,962	$ 35,486,604		$ 119,685,567
Failure to Furnish Accurate Wage Statements (Max $4K) [1 yr. SOL]			$ 744,000	$ 744,000
Waiting Time Penalties [3 yr. SOL] (Daily Hours Worked x 30 Days x Reg. Rate			$ 2,646,000	$ 2,646,000
PAGA Penalties ($100/$200) [1 yr SOL 7/3/2011]			$ 4,545,100	$ 4,545,100
Total Estimated Expenses, Wages Due, Interest, and Penalties	$ 84,198,962	$ 35,486,604	$ 7,935,100	$ 127,620,667

10. I have also calculated PAGA penalties, within a one-year statute of limitations, totaling $4,545,100.

V. Evidence Considered

11. In undertaking my assignment, I have considered information from a variety of sources, each of which is of a type that is reasonably relied upon by experts in my field. Those sources are identified throughout this report.

12. Specifically, I have relied on the Settlement Data Summary report produced by Exel through counsel[2], which contains, by contractor, amounts, if any, related to the following:

[1] It is my understanding that there may be 395 or more actual Plaintiffs in the case, and as such, calculations may need to be adjusted accordingly.
[2] EDV009742

a. Background Checks/Vehicle Records,
b. Claims,
c. DOT Physical Costs,
d. Equipment,
e. Fuel Reimbursement,
f. Liability Insurance,
g. Other,
h. Promissory Note/Performance Bond,
i. Repair/Maintenance,
j. Truck Lease & Rental Payments,
k. Uniforms,
l. Unsure,
m. Workers' Compensation/Occ-Acc, and
n. Settlement (i.e., payments).

The Settlement Data Summary report includes information for 383 contractors from their start date through their termination date (or January 6, 2015 if no termination date) and reflects total actual payments or deductions made by Defendants for each contractor during his related time period.

13. I have also relied on the Weeks Worked report produced by Exel through counsel[3], which contains the following information: (a) driver number and name (i.e., contractor), (b) start date, (c) termination date (or January 6, 2015 if no termination date), (d) second start date, if applicable, (e) second termination date, if applicable (or January 6, 2015 if no applicable second termination date), and related weeks based on the start and termination dates. The Weeks Worked report includes information for 387 unique driver numbers that will show the potential number of work weeks each contractor worked with Defendants.

14. I have relied on the iDirect Report produced by Exel through counsel[4], which contains, among others, the following information by delivery: (a) date[5], (b) driver number, and (c) related number of practical miles. The number of practical miles can be summarized by driver number and date, as well as by driver number and work week[6]. The number of dates can also be summarized by driver number and work week. The iDirect Report includes information from June 2, 2008 through March 31, 2015 related to 135 contractors.

15. Similarly, I have also relied on the Sears report produced by Exel through counsel[7], which contains, among others, the following information by delivery for client Sears: (a) manifest date, (b) contractor number, and (c) total miles. The number of total miles can be summarized by contractor number and manifest date, as well as by contractor number and work week. The number of manifest dates can also be summarized by driver number and work week. The Sears report includes information from September 25, 2011 through June 22, 2015 related to 39 contractors.

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[3] EDV009742
[4] iDirect Data.xlsx
[5] Based on "DLV_ATA" date. If there is no "DLV_ATA" date, then based on "ATD" date. If there is no "ATD" date, based on "ATA" date, and if there is no "ATA" date, based on "ETA" date.
[6] Based on a standard work week of Monday through Sunday.
[7] EDV108910

16. I have relied on the expert report, dated August 28, 2015, of Wesley B. Curtis Jr., who was retained as Plaintiffs' trucking expenses expert. Mr. Curtis has opined on the cost per mile, based on 150 miles per day or 36,000 miles per year, of operating a commercial truck as follows:

    a. Fuel of $0.39 per mile,
    b. Truck Insurance of $0.05 per mile,
    c. Cargo Insurance of $0.08 per mile,
    d. Medical Insurance of $0.09 per mile,
    e. Workers' Compensation Insurance Premium of $0.16 per mile,
    f. License/Registration/CVRA of $0.03 per mile,
    g. Permits of $0.01 per mile,
    h. Cell Phone of $0.02 per mile,
    i. Tolls of $0.04 per mile,
    j. Tires of 0.03 per mile,
    k. Preventative Maintenance of $0.02 per mile,
    l. Major Repairs of $0.13 per mile,
    m. Helper Wages of $0.66 per mile,
    n. Helper Payroll Taxes of $0.06 per mile,
    o. Miscellaneous Expenses/Losses of $0.04 per mile, and
    p. Average Depreciation from 2008 to 2014 of $0.22 per mile[8].

17. I have been provided with excerpts from 10 depositions transcripts based on the search terms of "meet" and/or "met". Of the 10 deposition transcript excerpts, six show a Plaintiff stating how long morning meetings lasted. Responses ranged from 10 to 15 minutes up to 30 minutes, for an average morning meeting duration of 23.75 minutes. It is my understanding that morning meetings would not include time spent opening boxes and inspecting products.

18. I have also been provided with excerpts from 24 deposition transcripts regarding meal and rest periods. Of the 24 deposition transcript excerpts, 11 appear to show a Plaintiff stating a quantifiable frequency of missed meal and/or rest periods, for an average missed meal period violation rate of 89.52% and an average missed rest break violation rate of 92.50%. If additional information is provided for other Plaintiffs, the responses and average could be updated accordingly. In addition, the deposition transcript excerpts of Exel Direct's management appear to show that they are not aware of any policies or procedures to provide off duty meal periods or rest breaks.

19. I have been provided with various Driver's Daily Logs (and related Driver's Vehicle Inspection Reports, if any), as well as various Time Sheets. These Driver's Daily Logs and Time Sheets may contain, among others, the following information, if any: (a) date, (b) total miles driven, (c) vehicle number, (d) start and finish times, (e) off duty/break start and end times, and (f) total hours worked.

20. I have been provided with 379 Dispatch Recap Reports, which appear to be specific to a location and a two week period, related to nine locations and 374 two week periods. These Dispatch Recap Reports contain, among others, the following information: (a) driver name

[8] Mr. Curtis has also opined on the cost per mile of Truck Payment as $0.31 per mile. For purposes of this report, I have used the Depreciation cost of $0.22 per mile as an estimate of truck cost.

and number, (b) date, and (c) related hours worked[9], if any. The number of dates in a work week can be summarized by driver name and number. Daily and/or weekly overtime (and double time hours) can also be determined, by driver name and number, from the hours worked.

21. I have been provided with a cost benefit analysis calculated by Defendants as to the value to Exel Direct of converting employees to contractors.[10] Specifically, the cost benefit analysis estimates an annual savings for Exel Direct of approximately $23,000 per truck per year.

22. I have also been provided with a Network Driver Pay presentation related to driver pay restructuring[11], as well as with various tax documents for eight Plaintiffs[12],

VI. Basis of Opinions

Weeks / Days / Hours Worked

23. With respect to the potential number of work weeks each Plaintiff worked with Defendants, I have used the number of weeks between the start and termination dates (or January 6, 2015 if no termination date) per the Weeks Worked report.

24. With respect to the potential number of days worked per week, I have used for each Plaintiff, when available, his average number of dates worked in a week per the iDirect Report and/or the Sears report. If there was no iDirect Report and/or Sears report information for a Plaintiff, I have used for each Plaintiff, when available, his average number of dates worked in a week per the Dispatch Recap Reports. If there were no Dispatch Recap Reports for a Plaintiff, I have assumed that, for each potential work week, each Plaintiff worked five days per work week.

25. With respect to the potential number and type of hours worked per week, I have used for each Plaintiff, when available, his average number of regular, overtime, and/or double time hours worked in a week as determined per the Dispatch Recap Reports. If there were no Dispatch Recap Reports for a Plaintiff, I have assumed that each Plaintiff worked 12 hours per work day.

26. According to the Realistic Preview of Business Opportunity[13], which recruiters use as a guideline when they speak with potential contractors[14], the typical work schedule is five to six (sometimes seven) days per week and usually 10-12 hours a day including loading; and while the schedule is account specific, Exel Direct's goal is to keep contractor's trucks operating at full capacity. Support Manager Gregory Smigelsky confirms that the above statements are true and correct[15] and Recruiter Cristina De La Rosa understands Exel Direct's goal to be

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[9] As of the date of this report, it is not clear if these hours include all time worked.
[10] EDV004202 – EDV004204
[11] EDV065801
[12] Redacted Class Member tax documents 150501.pdf
[13] EDV012933
[14] Deposition of Gregory P. Smigelsky, dated March 17, 2015, p. 167
[15] Deposition of Gregory P. Smigelsky, dated March 17, 2015, p. 192

keeping contractor's trucks operating at full capacity[16]. As such, it appears that my assumption of five 12-hour days per work week is in line with Defendants' expectations.

Miles Driven

27. With respect to the potential number of miles driven by each Plaintiff, I have used for each Plaintiff, when available, his average number of miles driven in a week per the iDirect Report and/or the Sears report. If there was no iDirect Report and/or Sears report information for a Plaintiff, I have assumed that each Plaintiff drove 150 miles per work day. It appears that this assumption is reasonable based on Defendants' own estimates and actual miles driven by contractors.

28. According to the cost benefit analyses calculated by Defendants as to the value of the synergy created by converting employees to contractors [17], Defendants used a miles per day estimate of 200 miles. Similarly, in the Estimated Contractor Annual Operating Expenses for six sites/hubs[18], Defendants estimated miles per day ranging from 150 to 288 miles.

29. According to the iDirect Report, the average practical miles per day is approximately 164 miles. Similarly, according to the various Driver's Daily Logs and Time Sheets provided to date, the average total miles driven per day is approximately 141 miles. Also, based on the total miles information contained within the Driver Manifests for Sears, the average daily miles driven is approximately 178 miles.[19]

Unreimbursed Employment Expenses and Improper Deductions

30. Plaintiffs have alleged that, in performing their duties for Defendants and/or in acting on Defendants' instruction, they necessarily incurred employment expenses that should have been reimbursed by Defendants and/or had improper deductions taken from their wages. I have calculated estimated employment expenses incurred by Plaintiffs and/or wage deductions to determine any reimbursement that they may be entitled to. These employment expenses include the following:

    a. Background Checks/Vehicle Records, Claims, DOT Physical Costs, Equipment, and Other;
    b. Liability Insurance and Workers' Compensation/Occ-Acc; and
    c. Fuel, Cargo Insurance, Medical Insurance, License/Registration/CVRA, Permits, Cell Phone, Tolls, Tires, Preventative Maintenance, Major Repairs, Helper Wages, Helper Payroll Taxes, Miscellaneous Expenses/Losses, and Depreciation.

31. It is my understanding that, with respect to Background Checks/Vehicle Records, Claims, DOT Physical Costs, Equipment, and Other, these costs were incurred directly by Plaintiffs in connection with their employment and were not reimbursed by Defendant and/or were deducted from their wages. For each of these cost categories, I have calculated estimated employment expenses, for each Plaintiff, as the related amount in the Settlement Data Summary report.

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[16] Deposition of Cristina De La Rosa, dated April 16, 2015, p. 94-95
[17] EDV004202 – EDV004204 and EDV004205 – EDV004207
[18] EDV012864
[19] EDV108910

32. It is my understanding that, with respect to Liability Insurance and Workers' Compensation/Occ-Acc, these costs were incurred directly by Plaintiffs in connection with their employment and were not reimbursed by Defendant and/or were deducted from their wages. For each of these cost categories, I have calculated estimated employment expenses, for each Plaintiff, as the related amount in the Settlement Data Summary report. If there was no related amount in the Settlement Data Summary report for a Plaintiff, I have estimated employment expenses for each cost category, when available, as (a) the Plaintiff's average number of miles driven in a week per the iDirect Report and/or the Sears report multiplied by (b) the Plaintiff's potential number of work weeks worked multiplied by (c) the related cost per mile calculated by Plaintiffs' trucking expenses expert Mr. Curtis. When not available, I have estimated employment expenses for each cost category as (d) 150 miles per work day multiplied by (e) the Plaintiff's potential number of work weeks worked multiplied by (f) the Plaintiff's potential number of days worked per week multiplied by (g) the related cost per mile calculated by Plaintiffs' trucking expenses expert Mr. Curtis.

33. It is my understanding that, with respect to Fuel, Cargo Insurance, Medical Insurance, License/Registration/CVRA, Permits, Cell Phone, Tolls, Tires, Preventative Maintenance, Major Repairs, Helper Wages, Helper Payroll Taxes, Miscellaneous Expenses/Losses, and Depreciation, these costs were incurred directly by Plaintiffs in connection with their employment and were generally not reimbursed by Defendant. For each of these cost categories, I have calculated estimated employment expenses, for each Plaintiff when available, as (a) the Plaintiff's average number of miles driven in a week per the iDirect Report and/or the Sears report multiplied by (b) the Plaintiff's potential number of work weeks worked multiplied by (c) the related cost per mile calculated by Plaintiffs' trucking expenses expert Mr. Curtis. When not available, I have estimated employment expenses for each cost category as (d) 150 miles per work day multiplied by (e) the Plaintiff's potential number of work weeks worked multiplied by (f) the Plaintiff's potential number of days worked per week multiplied by (g) the related cost per mile calculated by Plaintiffs' trucking expenses expert Mr. Curtis.

34. I have offset the estimated employment expenses, for each Plaintiff, with the Fuel Reimbursement amount in the Settlement Data Summary report. Potential damages related to unreimbursed employment expenses and wage deductions total $62,388,932.

Overtime Premiums Due

35. I am informed by counsel that the California Labor Code provides that hours worked over eight in one work day and over 40 in any work week, as well as the first eight hours worked on the seventh consecutive day of work in any one work week, constitute overtime hours and must be paid at time-and-one-half of the regular rate. In addition, hours worked over 12 in one work day and over eight on the seventh consecutive day of work in any one work week constitute double time hours and must be paid at double the regular rate. As such, based on my assumption of five 12-hour days per work week, there would be eight regular and four overtime hours per work day, or 40 regular and 20 overtime hours per work week.

36. With respect to overtime hours worked per week, I have used for each Plaintiff, when available, his average number of overtime hours worked in a week as determined per the Dispatch Recap Reports[20]. If there were no Dispatch Recap Reports for a Plaintiff, I have

[20] As of the date of this report, it is not clear if the hours worked per the Dispatch Recap Reports include all time worked.

assumed that each Plaintiff worked four overtime hours per work day. With respect to double time hours worked per week, I have used for each Plaintiff, when available, his average number of double time hours worked in a week as determined per the Dispatch Recap Reports. If there were no Dispatch Recap Reports for a Plaintiff, I have assumed no double time hours per work day.

37. I then calculated the overtime (and double time) premium wages that should have been paid as (a) the overtime hours multiplied by one-half (0.5) times the regular rate and (b) the double time hours multiplied by one (1.0) times the regular. For purposes of this report, I have assumed a regular rate of $30.00 per hour, which was calculated as (c) the piece rate of $24 per stop multiplied by an average of 15 stops per day (i.e., $360 per day) divided by (d) 12 estimated hours worked per day. Potential damages related to overtime premium wages due total $9,496,000, and potential damages related to double time premium wages due total $546,536.

38. For purposes of this report, I have also prepared an alternative calculation, which assumes a regular rate of $18.29 per hour, which was based on the General Freight Trucking hourly mean wage for 53-3033 Light Truck or Delivery Services Drivers per the May 2014 Occupational Employment and Wages.[21] Under this alternative, potential damages related to overtime premium wages due total $5,789,395, and potential damages related to double time premium wages due total $333,205.

Potential Meal Period Violations

39. I have been informed by counsel that Defendants are required to provide employees with (a) an uninterrupted off duty meal break for each shift an employee works in excess of five hours, with the meal break beginning before the end of the employee's first five hours of work, and (b) a second meal break for each shift an employee works more than ten hours, beginning by the tenth hour of work. I have also been informed that if an employee is not provided a required meal break, the employee is owed an extra hour of wages as premium pay.

40. Plaintiffs have alleged that they regularly worked more than five hours in a work day without being provided an uninterrupted off duty meal period of at least 30 minutes. With respect to potential meal period violations, I have used for each Plaintiff, when available, his deposition testimony as to the meal period violation rate. The majority of Plaintiffs who provided testimony described missed meal period frequencies close to 100% of the time. If there was no deposition testimony, I have been asked to assume, for each Plaintiff, a potential meal period violation for each work day, as any down time drivers may have had was not off duty or within the time parameters set forth in the wage orders. I have limited my calculation to one potential meal period violation per work day per Plaintiff, although it may be possible that multiple meal period violations occurred in the same work day. Potential damages related to meal period violations, at a regular rate of $30.00 per hour, total $5,557,654. Potential damages related to meal period violations, at an alternative regular rate of $18.29 per hour, total $3,388,316.

[21] http://www.bls.gov/oes/current/oes533033.htm

Potential Rest Break Violations

41. I have been informed by counsel that Defendants are required to authorize and permit employees who work in excess of three and one-half hours in a shift with a paid rest break of at least ten minutes for every four hours worked or major fraction thereof. I have also been informed that if an employee is not provided a required rest break or is not provided such break at the legally mandated time, the employee is owed an extra hour of wages as premium pay.

42. Plaintiffs have alleged that they regularly worked more than four (4) hours in a work day without being permitted a rest period of at least 10 minutes. With respect to potential rest break violations, I have used for each Plaintiff, when available, his deposition testimony as to the rest break violation rate. The majority of Plaintiffs who provided testimony described missed rest break frequencies close to 100% of the time. If there was no deposition testimony, I have been asked to assume, for each Plaintiff, a potential rest break violation for each work day, as any down time drivers may have had was not off duty or within the time parameters set forth in the wage orders. I have limited my calculation to one potential rest break violation per work day per Plaintiff, although it may be possible that multiple rest break violations occurred in the same work day. Potential damages related to rest break violations, at a regular rate of $30.00 per hour, total $5,612,569. Potential damages related to rest break violations, at an alternative regular rate of $18.29 per hour, total $3,421,796.

Minimum Wage Violations

43. For each Plaintiff, I have calculated the estimated minimum wages due at the statutory minimum wage rate for all estimated morning meeting hours worked, as it is my understanding that Plaintiffs were not paid additional amounts for these hours worked. I have used for each Plaintiff, when available, his deposition testimony as to the morning meeting duration. If there was no deposition testimony, I have assumed, for each Plaintiff, an average morning meeting during of 23.75 minutes per work day. These estimated minimum wages due total $597,271.

44. I understand from the pleading that there is also a second theory regarding minimum wage violations; that is, when considering total net earnings paid to the contractor and the hours worked to obtain those earnings, the contractor was not compensated at an effective regular rate of pay in excess of the applicable minimum wage. I understand that the parties are in the process of gathering additional driver logs, time sheets, and other information pertaining to the actual hours worked. I reserve the right to update and supplement my report upon production of this information.

Interest

45. As a consequence of violating the California Labor Code, Defendants may also be subject to interest based on estimated amounts due related to unreimbursed employment expenses, overtime and double time premiums, potential meal period violations, potential rest break violations, and minimum wages at a rate of 10% simple. I have calculated simple interest at 10%, using a midpoint convention, through August 31, 2015. Interest, based on a regular rate of $30.00 per hour, totals $35,486,604. Interest, based on an alternative regular rate of $18.29 per hour, totals $31,967,457.

Penalties

46. I am informed by counsel that, pursuant to Labor Code 226, Plaintiffs may be entitled to penalties for inaccurate wage statements at $50 for the initial violation per employee per work week and $100 for each subsequent violation per employee per work week up to a total of $4,000 per employee. I have assumed a violation for each Plaintiff and work week with estimated potential damages. These potential penalties, under a one-year statute of limitations, total $744,000.

47. I am informed by counsel that, pursuant to Labor Code 203, Plaintiffs may be entitled to waiting time penalties for non-payment of wages due at 30 days of wages. I have calculated waiting time penalties for any terminated Plaintiff with potential damages as 30 days at 12 hours per day at the regular rate of $30.00. These potential penalties, under a three-year statute of limitations, total $2,646,000. These potential penalties, under a three-year statute of limitations and at an alternative regular rate of $18.29 per hour, total $1,613,178.

PAGA Penalties

48. I am informed by counsel that, pursuant to Labor Code 2699, Plaintiffs may be entitled to PAGA penalties at $100 for the initial violation per employee per work week and $200 for each subsequent violation per employee per work week. I have assumed a violation for each Plaintiff and work week with estimated potential damages. These potential PAGA penalties, under a one-year statute of limitations, total $4,545,100.

Other

49. I was asked by counsel to analyze the "Synergy Calculations"[22], which includes, among others, a section titled "Cost differential employee v contractor". Based on my review of the calculations, it appears that this cost differential shows that Defendants would save approximately $22,962 per contractor per year by converting employee drivers to independent contractors. It is unclear whether this $22,962 annual savings per contractor takes into account additional savings related to employer payroll taxes, cargo claims, or workers' compensation. As such, this annual savings of $22,962 per contractor may be a conservative estimate.

50. To determine Defendants' minimum savings in changing to independent contractors, I have multiplied the savings of $22,962 per contractor by the total number of years each Plaintiff worked during the class period, as based on the Weeks Worked report. For the 387 Plaintiffs included in the Weeks Worked report, there were 909.50 years worked during the class period. As such, Defendants' own records suggest that they saved at least $20,883,939 (i.e., $22,962 x 909.50) in changing to independent contractors.

51. The calculation described above may understate savings to Defendants, as it does not take into account Plaintiffs with multiple trucks. If additional information is provided about the number of trucks owned by each Plaintiff, the calculation could be updated accordingly.

52. I was also asked by counsel to compare the average salary (including bonus) of $52,238 to the net profit per 18 Schedule C's related to eight Plaintiffs. Based on the net profit per the

[22] EDV004202 – EDV004204

Schedule C's, it appears that the average net profit is $22,846, which is $29,392 less than the average salary Exel Direct previously paid to drivers when classified as employees.

David Breshears, CPA/CFF
August 28, 2015

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MORSE, LLP

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FORENSIC AND FINANCIAL CONSULTANTS

Exhibit A

CURRICULUM VITAE

www.hemming.com

David M. Breshears, CPA/CFF

Employment & Education

2012 – Present	**Hemming Morse, LLP** ***Certified Public Accountants, Forensic and Financial Consultants*** Partner
1999 – 2011	**Hemming Morse, Inc.** Director, 2011 Manager, 2006-2010 Associate Staff Accountant
1998	**California State University, Chico** B.S. Accounting

Professional & Service Affiliations

- Certified Public Accountant, State of California, since 2006
- Certified in Financial Forensics, since 2008
- American Institute of Certified Public Accountants
- California Society of Certified Public Accountants
- Association of Certified Fraud Examiners (Associate Member)

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David M. Breshears, CPA/CFF

Presentations & Seminars

- *"E-Discovery & Electronically Stored Information 101"*
  Beeson Tayer & Bodine, May 2013
- *"How to Collect, Produce, and Use E-Documents: A Practical Primer"*
  BASF - Labor & Employment Conference, Yosemite, February 2013
- *"Forensic Accounting for Today's Busiest Practice Areas"*
  Continuing Education of the Bar-California, March 2012
- *"Utilizing Experts in Wage and Hour Litigation"*
  Buchalter Nemer, July 2011
- *"Class Action Employment Litigation"*
  California Socity of Certified Public Accountants-State Steering Committee, August 2010
- *Adjunct Professor, Golden Gate University, Wage & Hour Damages, Spring 2009, Fall 2009, Spring 2010*

Testimony

Trial

- **Honora Keller et al v. The Board of Trustees of California State University (2015)**
  Superior Court of the State of California, County of San Francisco, Case No. CGC-09-490977
- **Amanda Quiles, et al v. Koji's Japan Incorporated, et al. (2014)**
  Superior Court of the State of California, County of Orange, Case No. 30-2010-00425532-CU-OE-CXC
- **Ming-Hsiang Kao v. Joy Holiday, Joy Express, Inc., et al. (2014)**
  Superior Court of the State of California, County of San Mateo, Case No. CIV509729
- **Salinas, et al. v. Imperial Irrigation District (2014)**
  Superior Court of the State of California, City and County of Riverside, Case No. 10017367
- **Amerman v. Gurvinder Musafar (2013)**
  Superior Court of the State of California, County of Santa Clara, Case No. 112CV226364
- **Michael J. Pexa v. Farmers Group, Inc. (2012)**
  Superior Court of the State of California, County of Sacramento, Case No. 34-2009-00034950
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (2012)**
  Superior Court of the State of California, County of San Diego, Case No. GIC 870429
- **Maria Martinez and Juana Guzman v. Jatco, Inc. (2011)**
  Superior Court of the State of California, County of Alameda, Case No. RG08397316

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David M. Breshears, CPA/CFF

Testimony

Deposition

- **Betelhem Shiferaw v. Sunrise Senior Living Management, Inc. (2015)**
  United States District Court, Central District of California, Case No. 2:13-cv-02171-JAK-PLA
- **Honora Keller et al v. The Board of Trustees of California State University (2015)**
  Superior Court of the State of California, County of San Francisco, Case No. CGC-09-490977
- **Ming-Hsiang Kao v. Joy Holiday, Joy Express, Inc., et al. (2014)**
  Superior Court of the State of California, County of San Mateo, Case No. CIV509729
- **Fraser, et al. v. Patrick O'Connor & Associates, L.P. (2014)**
  United States District Court, Southern District of Texas, Case No. 4:11-cv-03890
- **Salinas, et al. v. Imperial Irrigation District (2014)**
  Superior Court of California, City and County of Riverside, Case No. 10017367
- **Smith, et al. v. Family Video Movie Club, Inc. (2013)**
  United States District Court, Northern District of Louisiana, Case No. 1:11-cv-01773
- **Lang v. DirecTV, Inc. (2013)**
  United States District Court, Eastern District of Louisiana, Case No. 2:10-cv-01085-NJB-SS
- **Sabas Arredondo, et al. v. Delano Farms Company, et al. (2013)**
  Eastern District of California, Fresno Division, Case No. 1:09-cv-01247-LJO-DLB
- **Gabriel Fayerweather v. Comcast Corporation (2012)**
  Superior Court of the State of California, County of San Diego, Case No. C-08-01470
- **Green v. Konica Minolta Business Solutions U.S.A., Inc. (2012)**
  United States District Court, Northern District of Illinois, Eastern Division, Case No. 11-CV-03745 (N.D. Ill.)
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (May 2012)**
  Superior Court of the State of California, County of San Diego, Case No. GIC 870429
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (April 2012)**
  Superior Court of the State of California, County of San Diego, Case No. GIC 870429
- **Martin Marine v. Interstate Distributor Co. (2012)**
  Superior Court of the State of California, County of Alameda, Case No. RG073582777
- **Maria Martinez and Juana Guzman v. Jatco, Inc. (2011)**
  Superior Court of the State of California, County of Alameda, Case No. RG08397316

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David M. Breshears, CPA/CFF

Selected Case Experience

- Engaged as damage expert by plaintiff, to analyze and quantify; meal and rest period claims, improper distribution of gratuities, and off-the-clock hours, for an upscale restaurant chain.
- Engaged as damage expert by defendant, a farm labor contractor, to evaluate claims related to off-the-clock hours worked and expense reimbursement for small tools for over 20,000 employees.
- Engaged as neutral accounting expert by plaintiff and defendant to calculate potential unpaid hours worked and additional overtime premiums for commission bonuses, for a manufacturing/engineering firm.
- Expert for the plaintiff. Retained to determine the frequency and magnitude of time shaving claims of a mid-size manufacturing firm.
- Provided consulting services to defense counsel in a class-action wage and hour matter, which alleged that hundreds of County employees were paid improper overtime wages under the FLSA. Prepared analyses using hours worked records, compensation data, employee records, and other data to determine the proper calculation of employees' regular rate of pay and related overtime compensation.
- Assisted counsel in preparing a case involving unpaid overtime, meal and rest break violations, and off-the-clock time for an employee of a hotel chain. Reviewed employment history files, time records, and other documents to determine the number of potential violations and to quantify damages.
- Assisted expert for plaintiffs' counsel in a class-action wage and hour matter, which alleged that over 250 small business banking officers were improperly classified as exempt. Reviewed statistical sample of hours worked, salary and commission related earnings, paid time off records, and other data to determine the damages related to unpaid overtime and missed meal breaks.
- Assisted expert for plaintiffs' counsel in a class-action matter against a fortune 500 company, which alleged that a class of several hundred individuals was misclassified as independent contractors in the state of Washington. Prepared analysis of average earnings across all class members and performed comparison to national averages for similarly situated employees and independent businesses. Performed business valuation services to determine economic value of independent contractor assets and to incorporate any discounts that may apply related to the controls and requirements of the customer/employer operating agreement.
- Assisted expert for plaintiffs' counsel in a class-action matter against a Fortune 500 company, which alleged that over 75,000 California employees were required to pool their tips with supervisory employees in direct violation of the California Labor Code.
- Provided consulting services to plaintiffs' counsel in a class-action wage and hour matter, which alleged that hundreds of employees were not paid the proper "living wage" in accordance with the company's contractual obligation. Created a database of hours worked and earnings information from paper and electronic records, and then providing damages estimates based on a variety of assumptions and legal theories.
- Advised counsel on class certification issues by applying economic and statistical approaches to analyze evidence relating to class member variation, if any, and to determine both liability and damages.
- Consulted for Health Provider in a dispute involving a guaranteed maximum price contract for the construction of various structures. Assisted the expert in analyzing construction costs incurred and calculating the amount due to the general contractor.

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Exhibit A

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David M. Breshears, CPA/CFF

Selected Experience continued

- Performed statistical and contractual analysis for labor settlement or arbitration purposes, including analysis of pay and benefits, job content, productivity, labor costs, and profitability.
- Consulted clients in their efforts to identify overpayments of construction projects; discover errors and identify unreasonable project charges; identify weaknesses in contractual agreements; reduce risks of fraud, waste, and abuse; and recover payments made in error.
- Prepared financial analyses in connection with assignments involving fraud, contract disputes and lost profits.
- Performed extensive research for a variety of cases, including cases involving fraud, contract disputes, and lost profits.
- Created various databases and/or tested the accuracy of databases created by others in order to assimilate large amounts of information to be presented in a meaningful manner.
- Managed audit engagements from planning to reporting, including delegation and review of staff assignments and control of time and expenses.
- Prepared and examined financial reports including research and analysis of technical accounting issues.
- Analyzed client accounting systems and related controls and developed specific recommendations for improvements.

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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CASE NO. 3:12-cv-04137-JCS

CASE NO. 4:13-cv-03091-JCS

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT INC.; DPWN HOLDINGS (USA), INC.; DEUTSCHE POST BETEILIGUNGEN HOLDING GMBH; EUROMARKET DESIGNS, INC. d/b/a CRATE & BARREL; OFFICE DEPOT, INC.; SEARS HOLDINGS CORPORATION; WILLIAMS-SONOMA, INC.; JC PENNEY COMPANY, INC.; LA-Z-BOY, INC.; RESTORATION HARDWARE HOLDINGS INC., D/B/A RESTORATION HARDWARE; IKEA, Inc.

Defendants.

SUPPLEMENTAL EXPERT REPORT OF DAVID BRESHEARS, CPA/CFF

1. I have been retained by counsel for the Plaintiffs in the matter of Daniel Villapando, et al. ("Plaintiffs") v. Exel Direct Inc., et al. ("Defendants"). I previously issued a report, dated August 28, 2015, calculating the amount of potential damages, including penalties, liquidated damages, and interest, for the Plaintiffs due to Defendants' alleged California wage and hour violations, as well as the amount of potential damages, including penalties, for the PAGA represented individuals due to Defendants' alleged violations of California Labor Code.
2. I have been asked to review the Driver's Daily Logs produced and made available by Defendants, which contain, among others, the following information: vehicle number, date, if deliveries were local or non-local, and on duty/drive start and finish times. As such, the on duty/drive start and finish times can be used to determine, for each driver day, the number of on duty/drive hours recorded , as well as the number and duration, if any, of recorded breaks.
3. It is my understanding that Plaintiffs' counsel was provided access to a large volume of Defendants' business records. I am informed that Plaintiffs' counsel and their team of reviewers, in the presence of representatives from defense counsel's office, screened each box to determine if it contained Driver's Daily Logs. I am further informed that the Driver's Daily Logs were generally grouped together within the boxes that contained them and that they can be identified by their distinctive shape, size, color, and appearance when compared to the other documents contained in the boxes. It is my understanding that the search protocol allowed Plaintiffs' counsel to identify the vast majority, if not all, of the Driver's Daily Logs that Defendants have made available for review.
4. The Driver's Daily Logs range from January 7, 2010 to May 22, 2015, and include information for 2,572 driver days with a non-sleeper vehicle.[1]
5. Similarly, I have been asked to review daily Time Sheets, which contain, among others, the following times: start, break start, break end, and finish. As such, the times can be used to determine, for each driver day, the number of work hours recorded , as well as the number and duration, if any, of recorded breaks.
6. These daily Time Sheets, with blank fields to enter break start and end times, approximately range from July 2013 to September 2013, and include information for 1,271 driver days.[2] They do not include those daily Time Sheets without blank fields to enter break start and end times, which approximately range from October 2011 to May 2015.
7. It is my understanding that Defendants produced a subset of daily Time Sheets in pdf format and that Plaintiffs' counsel was provided access to a large volume of bankers boxes which contained a variety of Defendants' business records. I am informed that, dispersed within these bankers boxes, were some large caches of daily Time Sheets, which were copied in their entirety. However, other daily Time Sheets were attached to driver manifests and other related documents, which were not copied as it would have been cost prohibitive to separate and isolate the daily Time Sheets. As such, my analysis may not reflect all available daily Time Sheets in the Defendants' possession.
8. I have also been asked to review 20 requests for proposals as prepared by Defendants in connection with bidding out jobs. These requests for proposals reflect related estimated delivery specialist annual operating expenses and annual miles, and as such, a cost per mile can be determined.

Potential Meal Break Violations

9. I have been informed by counsel that Defendants are required to provide employees with (a) an uninterrupted meal break for each shift an employee works in excess of five hours, with the meal break beginning by the end of the employee's first five hours of work, and (b) a second meal break for each shift an employee works more than ten hours, beginning by the tenth hour of work. As discussed in my previous report, I have used for each Plaintiff, when available, his deposition

[1] There were 21 additional driver days with incomplete or overlapping time entries and nine additional driver days with a sleeper vehicle.

[2] There were 2 additional driver days with incomplete or overlapping time entries.

testimony with respect to potential meal period violations. If there was no deposition testimony, I was asked to assume, for each Plaintiff, one potential meal period violation for each work day (even though two may be possible for shifts over ten hours), as any down time drivers may have had was not off duty or within the time parameters set forth in the wage orders.

10. Based on my review of Defendants' own Driver's Daily Logs, there are 2,572 driver days with a non-sleeper vehicle. Of these 2,572 driver days, 2,274 relate to non-local deliveries and 298 relate to local deliveries[3].
11. Of the 2,274 driver days related to non-local deliveries, there are 2,153 driver days in excess of five hours. With respect to first meal breaks, I have identified that 688 driver days, or 32.0%, showed no recorded break. I have also identified that, of the 1,465 driver days in excess of five hours with recorded breaks (i.e., 2,153 – 688), 1,140 driver days, or 77.8%, reflect a first meal break taken only after five recorded hours of work. As such, I have determined that 84.9% of the 2,153 driver days in excess of five hours show no recordation of a first meal break or no recordation of a first meal break until after the fifth recorded hour of work.
12. Of the remaining 325 driver days with recordation of a timely first meal break, there are 143 driver days in excess of ten hours. With respect to second meal breaks, I have identified that 124 driver days, or 86.7%, showed no recorded second break. I have also identified that, of the 19 driver days in excess of ten hours with recorded second breaks (i.e., 143 – 124), ten driver days, or 52.6%, reflect a second meal break taken only after ten recorded hours of work. As such, I have determined that 91.1% of the 2,153 driver days in excess of five hours show no recordation of a first meal break, no recordation of a first meal break until after the fifth recorded hour of work, no recordation of a second meal break (when applicable), or no recordation of a second meal break until after the tenth recorded hour of work.
13. Based on my review of Defendants' own daily Time Sheets with blank fields to enter break start and end times, there are 1,271 driver days. Of these 1,271 driver days, there are 1,266 driver days in excess of five hours. With respect to first meal breaks, I have identified that 402 driver days, or 31.8%, showed no recorded break. I have also identified that, of the 864 driver days in excess of five hours with recorded breaks (i.e., 1,266 – 402), 782 driver days, or 90.5%, reflect a first meal break taken only after five recorded hours of work. As such, I have determined that 93.5% of the 1,266 driver days in excess of five hours show no recordation of a first meal break or no recordation of a first meal break until after the fifth recorded hour of work.
14. Of the remaining 82 driver days with recordation of a timely first meal break, there are 52 driver days in excess of ten hours. With respect to second meal breaks, I have identified that 52 driver days, or 100.0%, showed no recorded second break. As such, I have determined that 97.6% of the 1,266 driver days in excess of five hours show no recordation of a first meal break, no recordation of a first meal break until after the fifth recorded hour of work, or no recordation of a second meal break (when applicable).
15. The potential meal break violations reflected in Defendants' own Driver's Daily Logs and daily Time Sheets appear to show a potential meal period violation in the vast majority of driver days analyzed. In total, there are 3,545 driver days (i.e., 2,274 + 1,271), of which 3,419 are in excess of five hours (i.e., 2,153 + 1,266). I have identified that 3,198 driver days (i.e., 1,962 + 1,236) showed no recordation of a first meal break, no recordation of a first meal break until after the fifth recorded hour of work, no recordation of a second meal break (when applicable), or no recordation of a second meal break until after the tenth recorded hour of work, which is 90.2% of total driver days or 93.5% of total driver days in excess of five hours. This appears to be consistent with Plaintiffs' allegation that they were not provided proper meal periods.

[3] It is my understanding that drivers were not required to record breaks for local deliveries.

16. If the average potential meal break violation of 90.2% shown above was applied to the meal break calculations in my previous report, the potential damages, including interest, related to meal break violations would be approximately $7,145,582.
17. This analysis of potential meal break violations as described above does not contemplate whether or not the remaining 6.5% of driver days in excess of five hours without potential meal break violations (i.e., 100% - 93.5%) could be considered in violation because the driver was not relieved off all duties during the meal break.

Unreimbursed Employment Expenses and Improper Deductions

18. As discussed in my previous report, I have relied on the expert report, dated August 28, 2015, of Wesley B. Curtis Jr., who was retained as Plaintiffs' trucking expenses expert. Mr. Curtis has opined on the cost per mile, based on 150 miles per day or 36,000 miles per year, of operating a commercial truck as follows, for a total of $2.03 per mile:

    a. Fuel of $0.39 per mile,
    b. Truck Insurance of $0.05 per mile,
    c. Cargo Insurance of $0.08 per mile,
    d. Medical Insurance of $0.09 per mile,
    e. Workers' Compensation Insurance Premium of $0.16 per mile,
    f. License/Registration/CVRA of $0.03 per mile,
    g. Permits of $0.01 per mile,
    h. Cell Phone of $0.02 per mile,
    i. Tolls of $0.04 per mile,
    j. Tires of $0.03 per mile,
    k. Preventative Maintenance of $0.02 per mile,
    l. Major Repairs of $0.13 per mile,
    m. Helper Wages of $0.66 per mile,
    n. Helper Payroll Taxes of $0.06 per mile,
    o. Miscellaneous Expenses/Losses of $0.04 per mile, and
    p. Average Depreciation from 2008 to 2014 of $0.22 per mile.

19. Based on my review of Defendants' requests for proposals, the estimated delivery specialist annual operating expenses per mile average to be $2.09 per mile (see attached Exhibit 1).[4] As such, the average total cost per mile reflected in Defendants' own requests for proposals appears to be consistent with the total cost per mile of $2.03 calculated by Plaintiffs' trucking expenses expert Mr. Curtis, and if applied to the unreimbursed employment expenses and improper deductions calculation in my previous report, would result in similar potential damages.

David Breshears, CPA/CFF
October 30, 2015

[4] Excluding a low of $0.59 per mile and a high of $3.44 per mile.

Exhibit 1

Daniel Villalpando, et al. v. Exel Direct, et al.
Estimated Delivery Specialist Annual Operating Expenses

Description	Curtis	Living Spaces - Oakland	WS LA Dedicated (1)	IKEA NoCal SFR CCD	IKEA NoCal SFR LCDE&PA	IKEA NoCal SFR LCDSAC	Sears West 2011 - San Diego (1)	Sears West 2011 - Sylmar (1)	Living Spaces - Rialto	Hooker Furniture - Ontario	Williams Sonoma - Richmond p. 1	Williams Sonoma - Richmond p. 2	Hub - Pier 1	Hub - Arhaus	Hub - BoConcept	Hub - Appliances Connection	Hub - HON	Hub - HH Gregg	Hub - Humble Abode	Hub - Mid Continent Cabinetry	Hub - Global Tranz
Avg. Depreciation / Truck Payments	$ 0.22	$ 0.34	$ 0.29	$ 0.25	$ 0.17	$ 0.26	$ 0.59	$ 0.53	$ 0.34	$ 0.32	$ 0.50	$ 0.19	$ 0.36	$ 0.48	$ 0.36	$ 0.02	$ 0.32	$ 0.36	$ 0.36	$ 0.36	$ 0.27
Major Repairs / Maintenance	0.13	0.10	-	0.10	0.10	0.10	0.08	0.08	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
Truck Insurance	0.05	0.21	0.21	0.19	0.13	0.20	0.40	0.36	0.21	0.22	0.23	0.09	0.22	0.22	0.25	0.05	0.22	0.25	0.22	0.22	0.18
License & Registration; Property Tax	0.03	0.02	-	0.01	0.01	0.01	0.03	0.03	0.02	0.02	0.02	0.01	0.02	0.02	0.02	0.00	0.02	0.02	0.02	0.02	0.01
Truck Appearance		0.03	-	0.00	0.00	0.00	0.05	0.05	0.03	0.01	0.03	0.01	0.03	0.03	0.03	0.00	0.03	0.03	0.03	0.03	0.00
Fuel (may include maintenance)	0.39	0.03	0.37	0.34	0.34	0.34	0.52	0.52	0.04	0.58	-	-	0.53	0.53	0.53	0.48	0.34	0.53	0.53	0.53	0.28
Fuel Surcharge		0.05	-	-	-	-	-	-	(0.01)	(0.24)	-	-	(0.19)	(0.19)	(0.19)	(0.14)	-	(0.19)	(0.19)	(0.19)	-
Employee Labor	0.66	0.67	0.64	0.49	0.33	0.51	1.06	0.95	0.66	0.63	0.74	0.28	0.71	0.71	0.71	0.04	0.63	0.71	0.71	0.71	0.48
Payroll Taxes	0.06	0.08	0.09	0.05	0.04	0.06	0.12	0.10	0.08	0.07	0.09	0.03	0.07	0.07	0.07	0.00	0.07	0.07	0.07	0.08	0.05
Workers Comp Ins	0.16	0.53	0.15	0.11	0.08	0.12	0.22	0.20	0.50	0.13	0.56	0.23	0.36	0.36	0.29	0.04	0.17	0.35	0.36	0.61	0.11
Cargo Insurance / Damage Claims	0.08	0.06	0.01	0.02	0.01	0.02	0.10	0.09	0.06	0.02	0.07	0.03	0.06	0.06	0.06	0.00	0.06	0.06	0.06	0.06	0.02
OTHER (Acct, etc.)	0.04	0.02	0.01	0.01	0.00	0.01	0.16	0.15	0.02	0.01	0.02	0.01	0.02	0.02	0.02	0.00	0.02	0.02	0.02	0.02	0.01
Medical Insurance / Employer Half of SS Medicare	0.09	0.08	-	0.06	0.04	0.06	-	-	0.08	0.07	0.08	0.03	0.08	0.08	0.08	0.00	0.07	0.08	0.08	0.08	0.06
Physical / Drug Test		0.00	-	0.00	0.00	0.00	-	-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cell Phone / Communication	0.02	0.03	-	0.02	0.01	0.02	-	-	0.03	0.03	0.03	0.01	0.03	0.03	0.03	0.00	0.03	0.03	0.03	0.03	0.02
Ad Fee Revenue		(0.02)	-	-	-	-	-	-	(0.02)	-	-	-	-	-	-	-	-	-	-	-	-
Performance Incentive Pay		(0.14)	-	-	-	-	-	-	(0.14)	-	-	-	-	-	-	-	-	-	-	-	-
Self Emp Tax			0.12				0.26	0.24													
Pads and Ties			0.01	-	-	-	0.05	0.04	-	-	-	-	-	-	-	-	-	-	-	-	-
Permits	0.01																				
Tolls	0.04																				
Tires	0.03																				
Preventative Maintenance	0.02																				
GL Claims														0.03							
{No description}							(0.20)	(0.25)													
	$ 2.03	$ 2.08	$ 1.90	$ 1.65	$ 1.25	$ 1.71	$ 3.44	$ 3.10	$ 2.00	$ 1.97	$ 2.48	$ 1.03	$ 2.41	$ 2.56	$ 2.36	$ 0.59	$ 2.08	$ 2.43	$ 2.41	$ 2.68	$ 1.61

(1) Cost per mile does not include "Net Income" contractor cost.

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and behalf of all others similarly situated,

Plaintiff,

-vs-

EXEL DIRECT, INC., et al.,

Defendants.

Case No: 3:12-cv-04137-JCS
3:12-cv-03091-JCS

DEPOSITION OF JONATHAN WALKER, Ph.D.
FEBRUARY 12, 2016

Reported by:
ANNE M. TORREANO, RPR, CCRR, CLR, CSR No. 10520
JOB NO. 102656

difference between the tax number and economic number.
MR. KADUE: Counsel, I need to go off the record.
MR. KONECKY: Hang on. Let me just ask one last question.
BY MR. KONECKY:
Q. Did the tax -- is it your opinion that aside from the actual amount that is paid upfront by Exel, that tax records for the plaintiffs in the class can provide an accurate basis for determining their net income from Exel after paying for expenses?
A. I'd have to hear that question again.
MR. KONECKY: Could you read it back?
RECORD READ AS FOLLOWS:
"Q. Is it your opinion that aside from the actual amount that is paid upfront by Exel, that tax records for the plaintiffs in the class can provide an accurate basis for determining their net income from Exel after paying for expenses?"
MR. KADUE: Objection. It's been asked and answered.
Go ahead.
THE WITNESS: Again, depends what you mean by "net income." I mean, it's assuming that people are

operating within the rules, within the law. It measures something. It's called taxable income. And yeah, it is what it is. But I don't -- wouldn't say that one could look just at tax records, without any sort of supplementary information, and necessarily draw conclusions about what class members' economic benefit was from their relationship with Exel.

MR. KADUE: Sorry. I've got to go.

MR. KONECKY: That's fine.

(RECESS TAKEN.)

BY MR. KONECKY:

Q. Before we broke, you were talking about tax records and whether or not you could find the economic benefit from Exel by looking at the tax records.

What did you mean by "economic benefit"?

A. I meant the extent to which a particular contractor benefited economically, earned some net economic benefit, some welfare improvement, some financial improvement from their relationship with Exel as a contractor or employee worker.

Q. So when you say "economic benefit," does that imply or not imply a benefit to the level of meeting minimum legal requirements? For example, whether it's minimum wage or overtime or reimbursement of expenses.

A. Well, I didn't understand the question that

I've answered to have anything to do with sort of legal required levels. The question had to do with whether or not -- as I understood it, as I was interpreting it, had to do with whether or not tax data are accurately measuring the financial benefits that people derive from their relationships with Exel.

And I was saying that as a general rule, economic benefit, the true financial benefit, is not going to be measured accurately by tax records. You would need to supplement them in some way in order to account for the specific characteristics of tax laws that may lead to overstatement of expenses or understatement of benefit.

That's what the answer had to do with. It didn't have anything to do with minimum wage requirements.

Q. Fair enough, but let me try to ask a different way.

So in your report you may talk about economic benefits or suffering financially or words to that effect. Are you -- when you discuss somebody's benefit or loss economically in the report, are you making any connection or opinion as to whether or not either the benefit is sufficient to comply with wage laws or the loss is sufficiently material to mean that it falls

Other than that, no.

Q. All right. And that's the analysis shown on figure 8 of your report?

A. Yes.

Q. Showing total damages of $8,041,473?

A. Yes.

Q. And that analysis -- the inputs for that analysis are limited to overtime, double-time, helper costs, equipment, background checks, vehicle records and DOT physical costs?

A. The categories of recovery are limited to those, yes.

Q. So, for example, it doesn't -- you're not including any recovery or potential recovery for fuel costs; right?

A. In this partial correction, that's correct.

Q. You're not including any recovery or potential recovery for cargo insurance?

A. In this correction, that's correct.

Q. Or for medical insurance?

A. That's correct in this correction, yes.

Q. Or for license and registration?

A. That's correct, yes.

Q. Or for permits?

A. That's correct, yes.

It's my understanding that pool of drivers were earning 150 to 300 dollars -- I'm sorry, 120 to 150 dollars per day, works not only for class members but also for contractors who are explicitly excluded from the class, and I don't know one way or the other whether they also worked directly for Exel on occasion.

Q. But in terms of your comparison when you're determining whether or not somebody suffered financially, you're comparing contractors of Exel with other individuals who are driving routes for Exel or Exel routes?

A. Yes. Well, with the caveat that you said when I'm determining, and I'm saying in here it appears to be the case based upon Mr. Breshears' and Mr. Curtis' models.

Q. So you haven't independently determined or verified that?

A. That's right.

Q. And you haven't talked with any of the contractors or the other individuals who are performing Exel routes in evaluating this; right?

A. I haven't talked to anybody, no. I've read deposition transcripts.

Q. Do any of your opinions or conclusions in this case bear upon whether or not Exel's policies regarding that.

There are lots of costs that one might not ever have that Mr. Breshears includes in his analysis. One need not ever pay for new tires. One need never pay for preventative maintenance. One need never pay for major repairs. One need never pay for towing. One need never pay tolls. One need never pay speeding tickets. There are lots of them, and I discuss them in greater detail in my report.

Q. And for those when you say "one need never pay," am I correct that that is because it's possible that, for example, with the tire, during the course of your time with Exel you may not need to replace your tire?

A. That's correct.

Q. Am I correct that you're not saying -- let me ask this differently.

Are you also saying that you're not putting wear on your tire while you're driving for Exel?

A. I know that Mr. Breshears I think asserted that. I don't -- I'm not a physicist. I don't know that every time you move your truck it results in some economic depreciation of your tire. I don't know that.

Q. With respect to any of the costs?

A. Same is true. Except for tolls. I'm

And this sort of rubber-meets-the-road discussion literally came up in Mr. Breshears' deposition, not in his report. And his report isn't focused on these impossibly small to measure changes. He's assumed -- other than his assumption that there is this continuous depreciation on this per-mile basis, which, you know, that I did focus on, and these costs didn't happen.

But no, I've not -- I don't know how this question differs from questions before. I've not done an analysis to try to estimate the extent to which these nonaccrued expenses somehow impacted class members in any way.

BY MR. KONECKY:

Q. Right. And I guess my question is -- I mean, you say in your report it may not have impacted one or more class members. And my question is simply, you haven't done an analysis to know for an fact that it hasn't impacted class members; you're just saying it may not have impacted class members?

A. Yeah, I'm saying there's no evidence that it did. That's what I'm saying. I'm not saying that it didn't. I'm saying there's no evidence that it did.

Q. You're not an expert in determining per-mile costs for, like, cars or other types of vehicles, are you?

A. No, I'm not.
Q. You don't have any experience working on that issue either for the IRS or for other logistics companies, do you?
A. I don't -- I didn't catch the exact phrase. The answer -- I think the answer to the ultimate question is no, I've not worked calculating costs per mile for the IRS or even logistics companies.
Q. But you're aware, though, that logistics companies, government agencies do calculate costs per mile?
A. That's a little trickier. I am aware that the government and logistics companies perform calculations where cost-per-mile numbers are arrived at. I don't know sitting here whether the United States endorses some particular number as a reliable estimate of the true economic depreciation accrued to a vehicle on a per-mile basis. I know that they perform various calculations for various purposes. I don't know they do that.
I don't know that any particular logistics company is endorsing some such calculation as being a reliable measure of the true economic depreciation of its vehicles on a per-mile basis. I don't know whether that's the case. I do know that various people within

logistics companies perform calculations of cost per mile and use them for various things.

Q. And I'm correct that those are not calculations you have performed?

A. No, I've not.

Q. And those are not -- the determination or calculation of costs per mile of a vehicle is not something you have any particular expertise in; correct?

A. That's correct.

MR. KADUE: Sometimes in the next ten minutes, 15 minutes, I'd like to take a lunch break.

MR. KONECKY: We can break now.

(LUNCHEON RECESS TAKEN.)

A F T E R N O O N S E S S I O N

BY MR. KONECKY:

Q. Let's move to paragraph 13 of your report.

Here you talk about the possibility that particularly successful contractors could expand beyond one truck, and they could ultimately evolve to a point where they're not driving trucks at all.

Do you see where I am?

A. I do.

Q. Do you know how many contractors for Exel in the class are not driving their own trucks at all?

A. No, I don't.

Q. Do you know how many have expanded beyond one truck?

A. No.

Q. Have you looked into that at all?

A. No.

Q. Footnote 2 you reference Byron Cifuentes.

A. Yes.

Q. How did you come to determine that he employed or subcontracted five drivers and seven helpers?

A. From reading his deposition transcript.

Q. Anybody else you have identified that has more than one truck?

A. I don't recall whether they're specifically cited in my report, but I remember having read deposition transcripts of such people, yes.

Q. Okay. Well, do you remember -- I mean, I see I think later on you talked about Oscar Rivera?

MR. KADUE: Are you referring to a particular page?

BY MR. KONECKY:

Q. I'm looking at your paragraph 23. Well, let me ask it a different way.

Other than individuals in your report that you identify as to having more than one truck, anybody else that you're aware of at Exel that has more than one truck?

A. I don't know. I didn't flag everyone for the purpose of putting them in the report, and I haven't gone back to see whether there were others that I just didn't mention here.

Q. Do you have any understanding or information as to -- even if you can't identify them by name, the percentage of drivers at Exel or in the class that are -- that have more than one truck or have had more than one truck at any point?

A. No. I thought that was the question you asked before about did you look into that. I don't know the number, no.

Q. Footnote 3 you say that you define a class member as adjust -- quote, adjusted settlement -- well, you don't have the quotes, but adjusted settlement as the individual's settlement plus adjustments for fuel, reimbursements and withholding of categories that are not already accounted for in Mr. Curtis' analysis.

When you refer to adjusted settlements in your report, does that include or not include out-of-pocket expenses that the driver may incur but which are not reflected in a settlement statement?

A. This is unrelated to those, so this is money

A. I have included all of the fuel cost estimates that were included in Mr. Breshears' estimates, his model, that had some reliable basis in the discovery record.

Q. And that, in your view, is zero?

A. That's right. That Mr. Breshears failed to provide any reliable estimate of the fuel that was actually used by class members. That's the point, that an analysis that reliably estimates the class members' fuel usage would have to look at their actual fuel usage or their actual payments for fuel, or it would have to be based on something other than guesswork. And Mr. Breshears didn't do that.

Q. Well, it's not -- I take it you don't believe that -- strike that.

Is it your belief that the class did not incur any fuel costs?

A. No, it's not.

Q. Okay.

A. It's my belief that one needs to go through a different analysis than the one Mr. Breshears did in order to get a reliable estimate of their fuel costs.

Q. And you didn't go through that analysis?

A. No, I did not.

Q. Okay.

A. I have included all of the fuel cost estimates that were included in Mr. Breshears' estimates, his model, that had some reliable basis in the discovery record.

Q. And that, in your view, is zero?

A. That's right. That Mr. Breshears failed to provide any reliable estimate of the fuel that was actually used by class members. That's the point, that an analysis that reliably estimates the class members' fuel usage would have to look at their actual fuel usage or their actual payments for fuel, or it would have to be based on something other than guesswork. And Mr. Breshears didn't do that.

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A. No, it's not.

Q. Okay.

A. It's my belief that one needs to go through a different analysis than the one Mr. Breshears did in order to get a reliable estimate of their fuel costs.

Q. And you didn't go through that analysis?

A. No, I did not.

Q. Okay.

EXHIBIT F

Message

From: Walker, Jonathan [walker.j@west.ei.com]
Sent: 11/16/2015 7:40:17 PM
To: Malowane, Laura [malowane.l@east.ei.com]
Subject: Re: Exel - call tomorrow

Regardless of whether we correct for instances in the iDirect data that Breshears counts drive time by hired drivers, we should identify one or two extreme examples, e.g. someone credited with driving more than 24 hours a day or someone whom he credited with more than two full timers' worth of driving time or just the person with the highest ratio of Breshears driving days to actual driving days.

Sent from my iPad

On Nov 16, 2015, at 4:40 PM, Malowane, Laura <malowane.l@east.ei.com> wrote:
Ok thanks.

Laura

On Nov 16, 2015, at 7:39 PM, Walker, Jonathan <walker.j@west.ei.com> wrote:
Sure. Also, I'm about to finish editing the last section or two of the draft. I think I had in mind much simpler analysis than the RAs have been doing. If my "partial corrections" leave errors uncorrected and we know that the errors inflate damages, we can just describe the errors without attempting to quantify the effects. Hopefully this will reduce RA work. If RAs have already done something more complicated than what I had in mind, we can consider rewriting the draft to match their work.

From: Malowane, Laura
Sent: Monday, November 16, 2015 4:37 PM
To: Walker, Jonathan
Subject: Fwd: Exel - call tomorrow

Does this sound okay?

Laura

Redacted

Redacted

EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs

vs.

EXEL DIRECT INC.; DPWN HOLDINGS (USA), INC.; and DEUTSCHE POST BETEILIGUNGEN HOLDING GMBH

Defendants

Consolidated Cases
Case No. 3:12-cv-04137-JCS
Case No. 4:13-cv-03091-JCS

F.R.C.P. RULE 26(a)(2)(B) REPORT OF JONATHAN WALKER

Contents

I. INTRODUCTION, QUALIFICATIONS AND ASSIGNMENT..2

II. SUMMARY...3

III. INCENTIVE PAY SYSTEMS...7

IV. CLASS MEMBERS' NET PAY AS CONTRACTORS EXCEEDED MARKET WAGES.......................9

V. MR. CURTIS'S ESTIMATES OF OPERATING COSTS ARE UNRELIABLE................................15

A. EXPENSES NOT NECESSARILY INCURRED 15

B. EXPENSES NOT NECESSARILY ATTRIBUTABLE TO CONTRACTOR CLASSIFICATION 17

VI. MR. BRESHEARS' ANALYSIS IS UNRELIABLE...19

A. MR. BRESHEARS' METHODOLOGY.. 19

B. MR. BRESHEARS' CONCEPTUAL ERRORS 23

C. PARTIAL CORRECTIONS TO MR. BRESHEARS' ANALYSIS 34

VII. CONCLUSION 38

I, Jonathan Walker, declare as follows:

I. INTRODUCTION, QUALIFICATIONS AND ASSIGNMENT

1. I am an economist. I have a bachelor's degree in economics from the University of California at Berkeley and a doctorate in economics from the Massachusetts Institute of Technology.

My Work Related Background

2. I am currently the President and Chief Executive Officer of Economists Incorporated ("EI"). EI was founded in 1981 for the primary purpose of providing economic advice related to regulation and litigation. Among other business activities, EI regularly advises law firms, employers and employees regarding labor economics issues including matters related to wage and hour laws. EI employs 43 economists plus administrative and research support staff working out of offices in Washington DC, San Francisco and Tallahassee.

3. Labor economics is one of my fields of expertise. I specialized in the study of labor markets as a graduate student. In addition to managing the firm, I personally consult about labor and employment related issues in the context of litigation and regulation. I have submitted expert reports and testified at deposition and trial about competitive rates of pay, statistical evidence related to discrimination claims, compliance with fair labor standards laws and other employment-related issues as a professional economist. My clients for this work have included individual plaintiffs, corporations, professional sports leagues, public corporations and the U.S. government. My curriculum vita is attached as Exhibit A to this report. Therein, I describe my background, experience and qualifications in more detail, including identifying every litigation matter in which I have ever submitted an expert report or testified as an expert witness.

My Assignment in This Case

4. Scopelitis, Garvin, Light, Hanson & Feary, P.C. ("Scopelitis") retained me on behalf of Exel Direct Inc. ("Exel"), now known as MXD Group, Inc. Exel is a national logistics and home delivery services company that contracts with various retail outlets, including Sears, Crate & Barrel, and Williams-Sonoma among others, to provide home delivery of consumer products for the retailers' customers. Exel's services also include the installation of appliances in the consumers' homes. For this purpose, Exel enters into agreements with delivery providers who

provide trucks and drivers to make deliveries for Exel's retail customers by which the parties characterized the delivery providers as independent contractors. Exel is now being sued by Plaintiffs representing a class of about 386 individuals who personally performed delivery services under such Independent Truckman's Agreements and Equipment Lease Agreements at least once.[1] I am referring to those individuals when I mention "contractors," or "class members." Scopelitis has asked me to apply my expertise in labor economics and statistics to discuss the economic characteristics of Exel's relationship with the class members. In that connection I also comment on the two Plaintiffs' expert reports, submitted by a CPA, David Breshears, and by a commercial trucking regulatory compliance consultant, Wesley B. Curtis, Jr.

5. In order to form my own opinions in this case, I have relied on my training and experience as an economist and material in the discovery record. A complete list of the materials that I have relied upon in preparing this report is attached as Exhibit B to this report. My research and analysis are ongoing in that I expect to respond to any analysis or assertions made by Plaintiffs or their experts, as appropriate. To the extent that additional documents or information are made available to me, I will review such documents and information and may incorporate them into my analysis and/or opinions.

6. EI is being compensated for my work in this case at my standard hourly billing rate of $625. Other economists and research staff at EI have assisted me on this matter. EI is being compensated for their time at their hourly rates which range from $265 to $530 per hour. My compensation does not depend in any way on the outcome of this matter, and EI's compensation does not depend on the litigation outcome either.

II. SUMMARY

Irrelevance of the Plaintiffs' Experts' "Savings to Exel" Analysis to the Proof or Measurement of Harm to Class Members

7. Incentive pay systems may benefit workers and companies simultaneously. It is improper and inaccurate to infer from a finding that Exel benefited from its contractor model, relative to an employee model, that the benefit came at class members' expense. Consequently, Mr. Breshears' "savings" calculations are irrelevant in considering how much better off or worse off class

[1] Plaintiffs' expert counts 387 class members by counting one individual twice. Individuals who provided trucks and drivers but never personally provided delivery services are not included in the class.

members may have been if they had been classified as non-exempt employees.

8. Taken together, Exel's settlement data and Plaintiffs' cost models imply that the class members generally received significantly more money as Exel contractors than they would have if they had been paid regular hourly wages at the prevailing market rate, time and a half or double-time as appropriate and explicit reimbursement for expenses. The class members do not appear to have suffered financially from Exel having classified them as independent contractors rather than non-exempt employees. Exel's failure to explicitly designate portions of its payments to class members as regular wage, expense reimbursement, overtime and double time did not harm the class members financially as a general matter, nor do Plaintiffs' experts provide any economically valid evidence that this failure harmed any individual class member financially.

The Unreliable Nature of the Curtis and Breshears Calculations

9. The financial estimates put forward by Mr. Curtis and Mr. Breshears are unreliable for the following reasons:

- ***Expenses not necessarily incurred.*** Mr. Curtis and Mr. Breshears offer little or no proof that class members incurred all of the expenses that they calculate.
- ***Expenses not attributable to the independent contractor classification.*** Mr. Curtis and Mr. Breshears include in their model of reimbursable expenses certain assumed outlays that would relate to truck-ownership or truck-leasehold. Mr. Curtis and Mr. Breshears make no effort to limit these estimates to expenses actually caused by or reasonably attributable to classification as an independent contractor rather than an employee.
- ***Expense estimates rely on baseless assumptions.*** Mr. Breshears estimates expenses based on costs per mile driven. For most class members, he estimates mileage based on the assumption that class members drove 150 miles per day, 5 days per week, 52 weeks per year. He has no basis for these assumptions about daily mileage, workdays per week, and workweeks per year. They are contrived out of whole cloth.
- ***Overtime calculations rely on baseless assumptions.*** Mr. Breshears' overtime estimates are based on the assumption that most class members worked for 12

hours on the days that they drove for Exel. Overtime calculations are also based on the assumption that class members worked five days per week, 52 weeks per year unless iDirect or Dispatch data in the discovery record proved otherwise. There is simply no evidence that these various assumptions about hours, days, and weeks worked are true. It is not merely the case that the calculations lack statistical basis. It is even worse, in that the assumptions are quite simply made up.

- ***Meal period and rest period premiums rely on statistically invalid extrapolations.*** Mr. Breshears' meal period and rest break premium estimates are based on extrapolations from deposition testimony by small, non-representative samples of class members—eleven class members regarding meal periods and four regarding rest breaks. There is no valid basis to infer that the behavior of the other 370+ members of the class was similar to that of these deponents. Put differently, there is no basis to infer that these few class members who testified are representative of the class in any statistically reliable sense. If a sample is selected by a method other than a random process, as is the case here, then extrapolation is not any better than simply guessing. Moreover, any extrapolations from samples of eleven or four class members would be imprecise anyway. Even if the eleven and four deponents were chosen by a random process, and even if their recollections of their experiences were accurate and Mr. Breshears' interpretations of their testimony were accurate, too, the average experience for these deponents could be quite different from the average experience for the class.

- ***Calculations of meal period and rest break premiums are not limited to those breaks Exel failed to authorize or permit.*** Mr. Breshears made no effort to determine why class members supposedly missed meal periods and rest breaks. He does not distinguish how many supposedly missed meal periods and rest breaks resulted from any action or inaction by Exel.

- ***Meeting time / minimum wage calculations rely on statistically invalid extrapolations***. Mr. Breshears' minimum wage calculations are based on the supposed time that class members spent at morning meetings. His estimates are based on extrapolations from six deponents' testimony. As these six deponents were not selected by a random process, it would be statistically inappropriate to extrapolate from their reported experience to the experience of the other 380 class members, because there is no statistically sound basis to infer that these six deponents are representative of the class in any dimension. Moreover, even if the six deponents were chosen at random, their average experiences could be materially different from the experience of the average class member.

Corrections to Mr. Breshears' analysis

10. I report a partially corrected version of Mr. Breshears' analysis. This partial correction excludes from Mr. Breshears' assumed reimbursable expenses for each class member those expenses for which Mr. Breshears provides no evidence establishing that the class member is likely to have actually incurred the expense as a result of the class member's classification as a contractor with Exel. The partial correction also limits overtime and double time to provably long workdays and workweeks. The partial correction excludes additional compensation for meeting time and meal period and rest break premiums, as Mr. Breshears does not provide any reliable basis to estimate the number of meetings that class members attended or the duration of such meetings and does not provide any reliable basis to infer that Exel did not provide or authorize and permit class members to take meal periods or rest breaks at their sole discretion or to infer the number of missed or untimely meal periods or missing rest breaks that the class members experienced. This analysis demonstrates that the overwhelming majority of Plaintiffs' damages calculations are based entirely on conjecture. Even the remaining amounts rely in part on supposition. Moreover, they overlook the point that actual compensation to class members apparently exceeded the compensation they would have gotten as non-exempt employees, as a general matter.

Preview of Sections III, IV, VI, and VI

11. In the section that follows (Section III), I discuss how Exel and class members alike may have benefited financially from the contractor model. Then I perform an analysis indicating that

many class members earned as much or more than they would have if they had been classified as non-exempt employees and paid prevailing market wages (Section IV). Following that I explain, in turn, Mr. Curtis's errors (Section V) and Mr. Breshears' errors (Section VI). Finally, I present and discuss a partially corrected version of Mr. Breshears' work (in Section VI.C), to illustrate how his errors create his grossly inflated reported results.

III. INCENTIVE PAY SYSTEMS

12. It is not uncommon for businesses to implement pay systems that are designed to attract, retain and incent entrepreneurial workers. Exel employees have testified that that was Exel's goal with its contractor system. Such systems may reward service providers for reducing costs, for example by identifying low cost sources of fuel, choosing the optimal truck for the types of routes that are more common for an area or hub, adopting cost effective maintenance practices, or identifying particularly productive and reliable helpers and class members to work with or for them. Exel's system would provide such rewards. By reducing costs, including finding ways to increase stops per truck per day, it is possible for Exel to reduce its aggregate outlay while simultaneously increasing pay for class members. In that case, dollar savings from efficiencies could be shared between Exel and the parties whom it contracts with by setting pay per stop at a level such that Exel's total costs are reduced while drivers' pay in the aggregate is increased.

13. As discussed below, the contractor model apparently delivered higher pay for Exel contractors, consistent with such a model. Particularly successful contractors could expand beyond one truck by employing or contracting with others to drive additional trucks on their behalf. They could ultimately evolve to the point that they were not driving trucks at all, but rather were primarily or exclusively managing businesses that contracted with or employed other drivers. Class members have testified to having such experiences.[2] Of course, not everyone would be equally successful under such a model. Although data are not available to accurately assess each class member's net pay, the settlement data produced in discovery suggest differing degrees of success by class members under Exel's contractor model. In Figure 1, I show the disparities across class members in terms of adjusted settlement[3] received over the period for which

[2] See the deposition transcript of Byron Cifuentes, p. 11. Mr. Cifuentes employed or subcontracted five drivers and seven helpers to work from the Exel / Sears San Diego facility as of the date of his deposition, June 3, 2015.

[3] In this report, I define a class member's Adjusted Settlement as the individual's Settlement plus adjustments for

settlement data were made available for this litigation—June 14, 2008 through January 6, 2015. (For convenience, I will refer to this time frame as "the data period.") Figure 1 is influenced by tenure; persons who earned similar amounts per week or per month may have earned dissimilar amounts over the class period because they worked at Exel for different lengths of time. Figure 2 shows the disparities across class members in terms of their average weekly adjusted settlement during the terms of their Independent Truckman's Agreements.

14. Figure 1 illustrates that there were vast disparities in financial outcomes across the class. Many class members earned no more than $50,000 in adjusted settlement from Exel. This is consistent with drivers leaving Exel quickly if they lacked the entrepreneurship necessary to profit in a contractor model as opposed to an employee model. Figure 1 also shows that many class members apparently did quite well financially. Thirty-eight class members earned $1 million or more in adjusted settlement over the data period. Figure 2 shows that the financial disparities across the class were not exclusively attributable to length of time under contract to Exel as a driver. Although ninety-two class members averaged $1,500 per week or less in adjusted settlement during their contract terms, forty averaged over $3,500 per week on average and one person averaged $12,100 per week.

15. Clearly, Exel's cost savings from a contractor model do not necessarily come at the expense of driver pay. To the contrary, Exel and class members as a group may both have benefited. Consequently, it is not accurate or informative to assess Exel's savings from implementing a contractor model as a measure of the contractor/driver's losses. Those class members who persisted with Exel are likely to be the class members who were particularly likely to find ways to reduce other costs besides driver wages. Such class members may have benefited relative to working for Exel or anyone else as an employee. They may not even have chosen to service Exel if the only option had been to do so on an employee basis.

fuel reimbursement and withholdings of categories that are not already accounted for in Mr. Curtis' analysis. Using the category labels in the Settlement Data (EDV009742) the equation is: Adjusted Settlement = Settlement + Fuel Reimbursement + Background Checks/Vehicle Records + Claims + DOT Physical Costs + Equipment + Other + Uniforms + Unsure.

IV. CLASS MEMBERS' NET PAY AS CONTRACTORS EXCEEDED MARKET WAGES

16. I have estimated net pay as a contractor and compared that pay to the market wages for employee drivers performing the same work. I have calculated net pay based on Mr. Curtis's and Mr. Breshears' cost assumptions and Exel's settlement and Dispatch data. The settlement data reflect the periodic payments that Exel made to its contracted drivers. Generally speaking, even assuming that Mr. Curtis and Mr. Breshears accurately estimate driver costs and experiences, the class members would have been worse off financially if they had been classified as non-exempt employees and paid prevailing market wages instead of being classified as independent contractors and paid settlement amounts.

Average Weekly Adjusted Settlement and How It Varied

17. The settlement data show each class member's receipts from Exel in total during that part of his or her contract term that occurred during the data period. I used these data to calculate the average adjusted settlement per week for each class member. I use adjusted settlement rather than unadjusted settlement because adjusted settlement better represents gross receipts prior to deduction of various costs that Mr. Curtis estimated which I address separately. None of the qualitative conclusions are affected by using adjusted settlement rather than unadjusted settlement in the analysis.

18. Having calculated average weekly adjusted settlement for each class member, I also calculated the average weekly adjusted settlement across the class, the highest average weekly adjusted settlement across class members, the 90th percentile for the class in terms of average weekly adjusted settlement, the 75th percentile, 50th percentile (i.e., the median) and the 25th percentile. I report these summary statistics in Figure 3 below.

19. Across all class members, the average weekly adjusted settlement was $2,262 ($117,624 per year). The top 10% earned $3,611 or more on average per week ($187,772 per year). The highest earner in terms of average adjusted settlement earned $12,101 per week ($629,252 per year).

20. The statistics shown in Figure 3 understate how much class members actually tended to earn in a year. One reason for this understatement is that short-tenure, lower-earning class members are included in the analysis. Exel witnesses have testified that there is high turnover

among new drivers.[4] Inefficient, non-entrepreneurial drivers who underperform under Exel's model left relatively quickly. These short-timers also earned less while they were with Exel than longer term contractor/drivers tended to earn.

21. In Figure 4, I report settlement information separately for 69 class members who contracted for six months or less and 289 class members who contracted with Exel for more than six months. There were 11 class members who terminated within six months of the start of the settlement data period. I cannot tell how long these class members had contracted with Exel prior to termination, so they are excluded from the analysis. Similarly, there were 8 class members who contracted with Exel on or after July 7, 2014. As the data produced in discovery end on January 6, 2015, I cannot tell whether these class members who began work after July 7, 2015 continued with Exel for six months or not. Therefore, these 8 class members are also omitted from Figure 4. Figure 4 demonstrates that most class members contracted with Exel for more than six months, at least 75%. The true percentage is probably higher as some of the 19 class members who are omitted from Figure 4 because they terminated within six months of the start of the data period or were hired within six months of the end of the data period also likely contracted with Exel for six months or more.

22. Figure 4 shows a dramatic difference in pay between short-term contractors and the vast majority of class members who accrue more than six months of tenure. Class members who amassed more than six months of experience under the Exel contract earned 96% more in weekly adjusted settlement on average than the short termers. This difference in average adjusted settlement is statistically significant and could not have occurred by chance.[5] Among class members who contracted with Exel for more than six months, the top 10% in terms of average weekly adjusted settlement earned $4,192 per week ($217,984 per year).

23. Figures 3 and 4 also tend to understate how well class members did financially as contractors because they average adjusted settlement over the entire data period. Presumably, the first few months as a contractor are atypical as the contractor is learning to operate more

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[4] Deposition transcript of Gregory P. Smigelsky, p. 129; Deposition transcript of Renee Albarano, October 29, 2013, p. 202.

[5] A common test for the difference in averages is the t-test. EI staff calculated a t-statistic in this case, and the statistic was significant at the 1% level, indicating less than a 1% chance of observing a difference in average adjusted settlement between the two groups by chance.

efficiently. The average adjusted settlement over a class member's entire tenure would understate the earnings after this breaking-in period. For example, the top earner in Figures 3 and 4 is Oscar Rivera. Mr. Rivera earned $12,101 per week on average or $629,233 annualized. Byron Cifuentes' average weekly adjusted settlement was less than that, only $8,756 or $455,301 annualized. However, Mr. Cifuentes, in testimony, provided more detailed information about his circumstances, including about settlement. Exel paid Mr. Cifuentes' trucking company $794,316 in 2014, or $15,275 per week.[6] Mr. Cifuentes' average weekly adjusted settlement over the entire data period ($8,756) understates his compensation in his higher earning years. Average weekly adjusted settlement also understates other class members' settlement in their higher earning years as an arithmetic fact. This will be true for all class members who contracted with Exel as drivers for more than a year.

Translating Settlement to Net Pay

24. Although they are misleadingly low as measures of class members' earning potential, I use the average adjusted settlement figures from Figures 3 and 4 to estimate pay before "Curtis-expenses" (certain categories of assumed contractor expenses that were not already deducted from adjusted settlement payments). The estimated adjusted settlement pay is $2,262 per week for all class members and $2,515 for class members who contracted with Exel for six months or more. The Dispatch data produced in discovery indicate that class members drove for Exel 3.65 days per week on average. At 3.65 days per week of driving, $2,262 per week corresponds to $619.73 per day and $2,515 per week corresponds to $689.04 per day.[7]

25. Mr. Curtis estimated certain categories of expenses that were not already deducted from settlement payments. Such expense categories include: fuel, truck insurance, cargo insurance, medical insurance, worker's compensation insurance, license and registration fees, tolls, tires, preventive maintenance, major repairs, helper wages, helper payroll taxes and "miscellaneous" expenses such as traffic and parking tickets. Mr. Curtis presents no evidence that all class members paid all of these assumed costs, nor does he present evidence that all of these costs would have been avoided if class members had been classified as non-exempt employees.

[6] Deposition transcript of Byron Cifuentes, p. 61.

[7] Average days per week can be calculated based on a 52 week year or based on however many weeks per year that the driver worked, *i.e.,* non-vacation weeks. In this discussion, 3.65 is average days per week driven based on a 52 week year.

Nevertheless, I will use Mr. Curtis's numbers to estimate net pay after expenses for class members as contractors. I will compare this net pay to market wages for non-exempt employees performing the same duties as the class members in the same part of the country.

26. I have estimated class members' daily costs based on Mr. Curtis's and Mr. Breshears' assumptions. Mr. Curtis estimated certain "fixed" costs that are invariant with respect to mileage; he estimated other costs that would vary based on days driven and a third group of costs that would vary by mile. Mr. Curtis's annual fixed costs total $16,693. This is the annual expenditure according to Mr. Curtis for liability insurance, cargo insurance, medical insurance, worker's compensation, licenses, permits and a cell phone. As I explain below, these figures are undoubtedly overstated for many class members and on average across the class, but I use them for this purpose because they are conservative for this exercise. Based on 3.65 days driven per week, $16,693 per year corresponds to $87.95 per day for these fixed costs. Helper wages, helper payroll tax and meals are daily costs; they will be a certain amount for each day a class member drove for Exel with a helper. Mr. Curtis estimates $114.58 per day for these things. Helper payroll taxes are overstated on average for class members for reasons discussed below, and meals would not be provided even to non-exempt employees. Nevertheless, I use Mr. Curtis's figure. Mr. Curtis estimates 87 cents per mile for variable costs. Variable costs include fuel, tolls, tires, preventative maintenance, repairs, depreciation, speeding tickets and other legal penalties. These figures are also overstated as discussed below. Using Mr. Breshears' assumption of 150 miles driven per day, 87 cents per mile corresponds to $130.50 per day.[8] In all, Mr. Curtis's model implies total costs of $333.03 per day for the class member who drives 3.65 days per week and 150 miles per day. Based on the data before rounding that underlies Figures 3 and 4, average daily adjusted settlement for the class was $619.66 and average daily adjusted settlement for class members who contracted with Exel for six months or more was $689.18. Subtracting expenses from adjusted settlement leaves net daily pay of $286.63 based on settlement for all class members or $356.14 based on settlement only for class members who contracted with Exel for six months or more. Adjusting further for 7.65% self-employment tax reduces these estimates to $264.70 per day for all class members or $328.90 per day for class members who contracted with Exel for six months or more. Based on 3.65 driving days per week, this daily range of $264.70 to

[8] The overall conclusion that class members were better off as contractors does not depend on Mr. Breshears' assumption of 150 miles per day. Even at twice this mileage, class members were better off as contractors.

328.90 corresponds to $50,240.56 to $62,425.18 per year in net pay. Of course, the annualized figures are influenced by the short workweek, less than 4 workdays per week on average.

Net Pay to Wage Comparison

27. Net driver pay in the ranges just calculated would exceed what class members would have earned in wages as employee drivers. Several class members testified by deposition about what they have to pay to hire drivers to do their work for them or to drive additional trucks. They say the market wage for drivers performing the same work as the class members in the same geographic markets is $120 to $150 per day.[9] Class members were better off financially being treated as contractors earning roughly $264.70 to $328.90 per day on average than being classified as non-exempt and earning the market wage of $120 to $150 per day. This disparity explains why the overwhelming majority of class members stayed with Exel for six months or longer rather than quickly terminating as contractors to work as non-exempt employees for other class members or employers unrelated to Exel.[10]

28. These calculations are influenced by the profits that class members earned by hiring other people to drive for them. The figures could be adjusted by attributing a percentage of settlement and a percentage of fixed costs to driving done by others. So long as 77% or more of settlement and fixed costs are attributable to driving by the class member as opposed to driving by the class member's subcontractors or employees, the basic model discussed above concerning all class members implies higher pay for class members as contractors earning settlement than as non-exempt employees earning market wages. So long as 68% or more of settlement and fixed costs are attributable to driving by the class member himself or herself as opposed to driving by his or her subcontractors or employees, the basic model discussed above concerning those class members who contracted with Exel for six months or more implies higher pay for class members

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[9] Deposition transcript of Byron Cifuentes, pp. 21-24; Deposition transcript of Edmundo Vega, pp. 23-25; Deposition transcript of Mauricio A. Torres, p. 16; Deposition transcript of Juan F. Mena, p. 22-23; Deposition transcript of Asuncion Aguilera, pp. 48-49; Deposition transcript of Jose A.C. Alancastro, pp. 25-26; Deposition transcript of Vladimir, Marinov, pp. 50-51; Deposition transcript of Rafael A. Raymundo, p. 34.

[10] The calculations of net pay discussed in the text are based on 150 miles per day. Net pay exceeds market wages in this model at average daily mileage of as much as 292 based on all class members' average adjusted settlement and 372 based on average adjusted settlement for class members who contracted with Exel for six months or more.

as contractors earning settlement than as non-exempt employees earning market wages.[11] Among class members accounted for in the iDirect data, the average class member drove his or her own truck 86.5% of the days the truck was driven.

29. Based on class members' testimony and the Plaintiffs' expense model, class members generally benefited financially from Exel's contractor model. As the contractor model compensated class members as well as they would have been compensated as non-exempt employees, the financial remedies they seek would constitute a windfall to the extent that they represent reimbursement for expenses not incurred, breaks actually taken, breaks voluntarily foregone, or "work time" not actually worked. Expense reimbursement is unnecessary to raise average net pay to market levels, and class members were fully compensated for all hours worked. The extra pay that class members generally earned as contractors relative to market wages they paid other drivers who are not part of the class far exceeded the value of any missed meal periods or rest breaks. Similarly, the $120 to $150 per day that contractors paid their hired drivers was compensation for all time worked, including but not limited to overtime, double time, and attendance at morning meetings. Consequently, class member pay of $264.70 to $328.90 per day—more than twice as high as some employees' wages—would compensate for these things as well.

30. From an economic perspective, limiting reimbursement to expenses that class members can prove they paid as a consequence of their driving as contractors for Exel, limiting meal period and rest break pay premiums to instances in which class members prove that Exel did not provide or authorize and permit them to take breaks, and limiting minimum wage payments to the time that class members prove they spent in morning meetings, would not tend to leave class members any worse off financially than they would have been if they had been treated as non-exempt employees. To the contrary, it would leave them as they stand, markedly better off financially on average.

[11] To derive 77%, solve the inequality Employee Pay > Contractor Pay, where "Employee Pay" = $150, and "Contractor Pay" = .9235*(Daily Adjusted Settlement*x – Fixed Costs*x-Daily Costs That Vary By Day – Daily Costs That Vary By Mile) = .9235*($619.66*x - $87.95*x -$114.58 - $130.50). To derive 68%, substitute $689.18 for $619.66 as Daily Adjusted Settlement in the inequality.

V. MR. CURTIS'S ESTIMATES OF OPERATING COSTS ARE UNRELIABLE

31. Mr. Curtis estimated truck operating costs. Mr. Breshears then relied on Mr. Curtis's cost estimates for his own estimates of class members' unreimbursed expenses attributable to their contractor classification at Exel. Mr. Curtis's cost estimates are not reliable for this purpose. For many cost categories, Mr. Curtis's estimates are based solely on his personal say so. Other than collecting information from individual class members, I am unaware of any way to ascertain whether Mr. Curtis's estimates for these cost categories accurately reflect class members' experiences. Moreover, Mr. Curtis did not limit his estimates to types of costs that all class members necessarily would have incurred (see Section V.A below), and Mr. Curtis did not limit his estimates to costs that were caused by or attributable to classification as Exel contractors (see Section V.B. below). Mr. Breshears relies upon Mr. Curtis's unsubstantiated assumptions, thus Mr. Breshears postulates class member expenses without any underlying evidence.

A. EXPENSES NOT NECESSARILY INCURRED

Long Term vs. Short Term Drivers

32. Mr. Curtis estimated a variety of costs related to owning and/or operating a truck that could be used for commercial purposes. Many of these expenses would not be likely to be incurred by short-term truck operators. As shown in Figure 4, at least 18% of the class contracted with Exel for six months or less. It is speculative that any of these class members incurred expenses for tires, preventive maintenance, repairs, or towing. Mr. Curtis assumed that drivers would buy new tires every six months on average and spend for major repairs once a year on average. Mr. Curtis does not report a separate figure for towing, but rather he bundles the cost with major repairs. Not all major repairs require towing, so his analysis implies that towing occurs even less frequently than once per year on average. Even if Mr. Curtis is correct about how frequently tire, major repair and towing expenses occur on average, it is unlikely that class members who only contracted with Exel for a short time would incur them. Figure 4 concerns class members who contracted with Exel for less than six months. Other class members who contracted with Exel for more than six months but less than a year would also be likely to avoid many of these costs even if Mr. Curtis's analysis is otherwise correct.

33. Longer term drivers may not have incurred Mr. Curtis's expenses either. Maintenance and repairs may be paid by truck leasing companies if at all. If not paid for by truck leasing

companies, repairs may also be paid by insurance carriers. Mr. Curtis does not provide any evidence regarding the frequency at which even long-term drivers need to be towed.

Depreciation

34. Class members who leased their vehicles would not pay depreciation charges separately either. This would also be part of the lease payment. Moreover, accurate measurement of economic depreciation would depend on purchase prices for class members' trucks, residual values and the proportion of wear and tear occurring over the damages period that is attributable to class members driving their trucks for Exel. Mr. Curtis does not report having analyzed any of these things to arrive at his depreciation figure.

Medical, Cell Phone, License, Registration, Tickets and Payroll Tax

35. Mr. Curtis includes medical insurance as an expense, but he does not identify any proof that all class members or any particular number of class members actually purchased it. Mr. Curtis estimates costs for cell phones, but some class members did not need cell phones for their Exel-related work. Mr. Curtis estimates costs for license and registration. However, class members who rented or leased their truck did not always have to pay these costs.[12] Mr. Curtis estimates class members' costs to pay parking tickets. However, not all class members received any parking tickets while contracting with Exel.[13] Mr. Curtis estimates class members' costs to pay employer-side payroll taxes for their helpers. However, class members have testified that they did not always treat helpers as employees.[14] Thus they did not always pay these payroll taxes.

Tolls

36. Mr. Curtis estimates toll costs. He says that tolls could reach $10 to $15 per day in the Bay Area while they could be as small as $5 per day in the Los Angeles area. Toll costs depend on routes. Although Mr. Curtis implies that all class members incurred at least $5 per day in tolls, there is no factual basis to assume that all class members incurred any tolls at all. For example, one Exel facility is in Sacramento. Yet there are no toll roads in the entire 21,000 square mile

[12] Deposition transcript of Jose Alcala, p. 41.

[13] Deposition transcript of Jose Alcala, p. 47.

[14] Deposition transcript of Edmundo Vega, pp. 19-20; Deposition transcript of Asuncion Aguilera, p. 52; Deposition transcript of Maiguel A. Jauregui, p. 50; Deposition transcript of Victoriano Molina, pp. 33-34; Deposition transcript of Theodore R. Roumbanis, p. 53.

Sacramento Combined Statistical Area.[15] One of the few class members to have testified by deposition said that he did not pay tolls at all while driving in California.[16] It is not possible to estimate the toll costs for the class on the whole or on average without analyzing the various routes that individual class members drove and the specific toll costs related to those routes or, alternatively, reviewing accurate financial records detailing the class members' outlays for tolls.

B. EXPENSES NOT NECESSARILY ATTRIBUTABLE TO CONTRACTOR CLASSIFICATION

Legal Infractions

37. The most obvious costs not attributable to contractor status are class members' costs for legal infractions. Mr. Curtis says that it is not unusual for commercial truckers to receive two or more traffic citations per year costing $200 each at a minimum. He also says that truckers typically accrue 20 or more parking citations costing $60 or more. Mr. Curtis includes his estimates of these fines and penalties among his cost estimates, but he does not explain why an employer would necessarily reimburse an employee for legal penalties.

Truck Ownership-Related or Lease-Related Costs

38. Mr. Curtis also includes among his estimates various costs that are attributable to the fact that class members owned trucks rather than the fact that they operated them for Exel's benefit. All of Mr. Curtis's fixed costs fall into this category. In fact, Mr. Curtis defines fixed costs as "costs a person entails just for owning a commercial vehicle. It doesn't matter if the commercial vehicle is sitting or moving. There is a daily cost of ownership of the vehicle regardless of what the vehicle is doing."[17] These truck ownership costs that Mr. Curtis included in his estimates include insurance, license and registration fees, motor carrier permit fees, and truck inspection fees. Class members have testified to owning or leasing their trucks prior to contracting with Exel and to using their trucks for purposes other than Exel deliveries. [18] Mr. Curtis makes no effort to

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[15] See www.tripadvisor.com/Travel-g28926-c186915/California:United-States:Ca.Toll.Roads.Bridges.And.Carpool.Info (identifying toll roads in California, with no mention of the Sacramento area).

[16] Deposition transcript of Jose Alcala, p. 41.

[17] Amended Expert Report of Wesley B. Curtis, Jr., October 30, 2015, p. 7.

[18] Deposition transcript of Abel Barajas Montes, pp. 45-47, 62; Deposition transcript of Byron Cifuentes, pp. 18-19; Deposition transcript of Theodore R. Roumbanis, p. 77; Deposition transcript of Mauricio A. Torres, pp. 8-10, 31-32; Deposition transcript of Miguel A. Jauregui, pp. 42-43; Deposition transcript of Juan J. Saravia, pp. 23-26.

apportion his fixed costs between Exel use and non-Exel use.

Medical Expenses

39. I discuss above that class members may not have purchased medical insurance. Even if they did, that does not mean that they would have been relieved of this expense had Exel classified them as non-exempt employees. Neither Mr. Curtis nor Mr. Breshears addresses this issue.

40. It was not the case during the damages period that employers had to provide free health insurance to their workers. The Affordable Care Act ("ACA") mandate, to provide *affordable* health insurance to workers, did not begin until 2015. Therefore, it was only in place for six days of Mr. Breshears' estimation period. Moreover, affordable does not mean free. Under the ACA, affordable means costing the employee less than 9.5% of household income. Household income includes not only the class members' hypothetical Exel pay, but also tips, class members' other business income, wages working for entities besides Exel, Social Security income, pension and retirement income, interest, dividends, capital gains, and spouses' and other householders' income. Neither Mr. Breshears nor Mr. Curtis cites any evidence about class members' actual household income, let alone their hypothetical household income under a different Exel driver classification model. Any hypothetical Exel health insurance offering might cost class members more than Mr. Curtis speculates that they paid in the actual world.

41. Finally, even if Exel would have hypothetically offered health insurance coverage at lower cost than the coverage a class member actually bought, that does not mean that the class member would have chosen the hypothetical Exel coverage over the coverage the class member bought in the actual world. Annual premium is not the only buyer purchase criterion for health insurance. Deductibles, co-payments, network coverage, plan structure (HMO, PPO, EPO), and types of procedures and services that are covered also matter. The potential insured's health and family history is relevant too. Determining that a class member would have paid any less for health insurance as an Exel non-exempt employee would require information about his or her individualized circumstances and preferences as well as some consideration of the prices and other product characteristics of Exel's hypothetical offering.

VI. MR. BRESHEARS' ANALYSIS IS UNRELIABLE

42. Mr. Breshears' damages-related and remedies-related analyses are unreliable. Some of the errors in Mr. Breshears' calculations flow from his reliance on Mr. Curtis. Given that many of Mr. Curtis's cost estimates are based on his personal say-so about average truckers' experiences rather than the actual experiences of the class or objective data, Mr. Breshears' estimates of these costs are also based on Mr. Curtis's say-so. As Mr. Curtis's cost estimates are not limited to costs that class members actually incurred because of their work for Exel as drivers, neither are Mr. Breshears' damages estimates limited in that way. In addition, Mr. Breshears creates his own baseless assumptions that are often at odds with the discovery record. He uses these assumptions to estimate reimbursable expenses, overtime, the incidence of missed meal and rest breaks, and the incidence of unpaid meeting time for class members. I discuss these errors in greater detail below. Then I partially correct Mr. Breshears' analysis to exclude certain reimbursements and other figures that are especially unreliable or baseless.

A. MR. BRESHEARS' METHODOLOGY

43. Mr. Breshears estimated amounts due from Exel to class members for a) reimbursement of expenses, b) pay premiums for overtime and double time, c) pay premiums for missing meal and rest breaks, and d) pay for time spent in meetings. I discuss each analytical category in turn.

Reimbursable Expenses

44. Mr. Breshears relied on settlement data to estimate what class members paid for background checks, vehicle records, claims, physical exams, equipment and other deductions that are in the settlement data but not specifically identified.

45. For most other expenses besides those in the settlement data, Mr. Breshears relied on Mr. Curtis's cost per mile estimates.[19] Mr. Breshears extrapolated from Mr. Curtis's costs per mile to costs per week based on estimated weekly mileage. For 122 class members, Mr. Breshears used information in the iDirect reports concerning their weekly mileage for at least a portion of their tenure as contractors.[20] Mr. Breshears assumed that these 122 class members drove their same

[19] The only exception is that for some class members there are settlement deductions for liability insurance and for workers' compensation / OCC-ACC. When those data were available, Mr. Breshears relied on them instead of Mr. Curtis's liability insurance and worker's compensation insurance estimates.

[20] Mr. Breshears' count of 122 class members includes Jose Cano twice. It also includes seven drivers who do not appear based on iDirect data alone to have ever personally driven trucks on Exel's behalf during the data period.

average weekly miles throughout their tenure as contractors during the data period as they drove during the time that their driving was included in the iDirect data. Although the iDirect data cover the entire data period, class members were not necessarily represented in the iDirect data for their entire tenures as drivers. Although Mr. Breshears stated in his report that he also relied on Sears data for mileage, upon review of his work papers I discovered that he did not do that. Mr. Breshears assumed that all other class members besides these 122 for whom he had iDirect data drove 150 miles per day. Mr. Breshears extended the weekly mileage figures to the entire damages period by assuming that each such class member drove each week during the term of his Independent Truckman's Agreement with Exel without any time off for sickness or vacations.

Overtime Premiums

46. Mr. Breshears relied in part on Dispatch data to calculate hours worked. The Dispatch data produced in discovery cover only a limited time period and a minority of the class members. However, the Dispatch data do report hours and days worked for the time period and people covered. For 109[21] class members for whom Dispatch data were available, Mr. Breshears relied on Dispatch data to calculate overtime and double time premiums. Mr. Breshears assumed that the remaining 278 class members drove 12 hours per day, thus he assumed they were owed four hours of overtime per day worked. For 68 of these 278 class members, Mr. Breshears used iDirect data as a source for days worked per week. Mr. Breshears assumed that the remaining 210 class members drove 12 hours per day five days per week every week that they contracted with Exel. These assumptions correspond to 20 hours per week of overtime for these 210 class members.

47. Mr. Breshears calculated the hourly overtime rate based alternatively on two different hourly wages—$30 and $18.29. The $30 figure is based on an assumed $24 per stop payment multiplied by an assumed 15 stops per day divided by an assumed 12 hours worked. The $18.29 figure is based on the May 2014 mean hourly wage for "Light Truck or Delivery Service" drivers employed in the "General Freight Trucking" category employed in the U.S. as a whole.

[21] This 109 figure appears to include a double counting of contractor Jose Cano, who appears in the data under two separate contractor numbers. This figure also represents the count of class members that Mr. Breshears used Dispatch data for. My own analysis indicates that there are 149 unique class members that appear In the Dispatch data. I do not know why Mr. Curtis did not rely upon the additional 41 class members' Dispatch data.

Meal Period and Rest Break Pay Premiums

48. According to Mr. Breshears, eleven class members estimated at deposition the frequency at which they failed to take meal breaks while driving for Exel, and four class members estimated at deposition the frequency at which they failed to take rest breaks. Mr. Breshears accepted these estimates as accurate for purposes of calculating meal period and rest break premiums for these class members. He assumed further that most of these deponents drove five days per week every week. Figure 5 summarizes Mr. Breshears' assumptions regarding the number of days per week that these eleven deponents drove for Exel. Mr. Breshears multiplied these assumed work days by these deponents' own purported estimates of the frequency of their missed or late meal periods and missed rest breaks to estimate their number of missed or late meal periods and missed rest breaks. Mr. Breshears calculated pay premiums for these assumedly missed meal periods and rest breaks without regard to whether they were missed because Exel did not provide or authorize and permit them or they were missed for some other reason.

49. Mr. Breshears assumed that none of the remaining 375 class members ever took the rest breaks or timely meal periods to which they were entitled. His basis for this assumption was an assertion that in the majority of depositions he reviewed in which meals or breaks were discussed, the deponents said they missed meal periods and rest breaks 100% of the time. Mr. Breshears calculated one hour of pay as meal break pay premium and one hour of pay as rest break pay premium per day driven by each of these class members regardless of whether the reason all of these breaks were supposedly missed was due to any policy or practice of Exel to not provide or authorize and permit class members to take breaks at the time and in the amount specified by California law for non-exempt employees. Having identified the number of hours of meal break and rest break pay premiums, Mr. Breshears calculated pay premiums based alternatively on the $30 per hour and $18.29 per hour figures discussed above.

50. In his supplemental report, Mr. Breshears reports having reviewed data demonstrating that his original meal period analysis was inaccurate. Mr. Breshears reports having reviewed a sample of daily logs (2,572)[22] and a sample of daily time sheets (1,271)[23]. For perspective, the

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[22] Although Mr. Breshears reports his understanding that Plaintiffs' counsel's search protocol allowed them to identify the vast majority, if not all, of the daily logs Defendants made available for review, I am informed by counsel that this is disputed. I am further informed that Exel made approximately 4.5 million documents available for review, that Plaintiffs' counsel elected not to review each document in each box and did not select the boxes to

damages period in this case began on June 14, 2008 and Mr. Breshears' supplemental report was dated October 30, 2015. There were 2,694 calendar days between the start of the damages period and the date of Mr. Breshears' supplemental report. If Exel had fielded 150 trucks in California on average five days per week over this time period, that would correspond to approximately 288,000 daily trips. If Exel fielded that many trucks on average six days per week, that would correspond to approximately 346,000 daily trips. Mr. Breshears' sample (a total of 3,843 daily logs and daily time sheets) represents only a tiny share of all trips by class members, and there is no evidence that this sample of daily logs and daily time sheets was selected by a random process. Accordingly, there is no reliable basis to extrapolate from them to the larger population of all days driven by the class. Moreover, class members have testified that they did not necessarily record breaks on these daily logs and time sheets.[24]

51. Notwithstanding the deficiencies of the logs and time sheets as data sources and the inadequacy of the samples to draw class wide inferences, the few logs and time sheets that Mr. Breshears did review demonstrate that class members took many breaks long enough to qualify as meal periods. These logs and time sheets conflict with the deposition testimony that Mr. Breshears relied on in his first report to conclude that meal periods never happened.[25]

52. Mr. Breshears reviewed 2,153 daily logs pertaining to non-local routes lasting more than five hours. There were 30-minute or longer rest periods in 68% of these trips. Given that Exel exercised no oversight over the timing of breaks and that a 30-minute break does not necessarily displace any more driving time when it is taken before the completion of the fifth hour of work than it does when it is taken after the fifth hour of work, it was apparently class member preference that dictated the timing of these breaks. Moreover, in 325 of these 2,153 trips (15%) class members elected to take rest periods prior to the completion of the fifth hour of work.[26]

53. Mr. Breshears reviewed 1,266 time sheets pertaining to workdays lasting five hours or

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be reviewed on a random basis.

[23] Mr. Breshears acknowledges that, due to the search protocol employed by Plaintiffs' counsel, he may not have all of the available time sheets.

[24] Deposition transcript of Vladimir Marinov, p. 94, Deposition transcript of Henry Capotosto, pp. 83-5.

[25] Deposition transcript of Rogelio De La Fuente, pp. 61-2, Deposition transcript of Daniel Villalpando, pp. 211, 223.

[26] Supplemental Report of David Breshears, CPA/CFF, paragraphs 10 and 11. I do not know why Mr. Breshears omitted trips taken by trucks with sleepers from his counts.

more. Of these 1,266 time sheets, 864 or 68% indicated the presence of a break of 30 minutes or more, the same percentage as in the sample of daily logs. Although Exel exercised no oversight regarding the timing of breaks, 82 of the time sheets showed a meal period prior to the completion of the fifth hour of work.

54. Notwithstanding Mr. Breshears' interpretation that eight Plaintiff-selected class members testified that they never took meal breaks, the business records that Mr. Breshears reviewed pertaining to roughly 3,400 workdays in excess of five hours show meal breaks occurring in the majority of workdays lasting five hours or more. These records will tend to understate the incidence of meals because class members have testified that they did not routinely mark their meal breaks on daily time sheets and daily logs. Although Mr. Breshears attempts to use these DOT-related records to determine the incidence of second meal breaks on ten-hour workdays, they are apparently useless for this purpose as I understand that DOT regulations do not require recordation of a second meal break after 10 hours of work.

Minimum Wages

55. Mr. Breshears asserts that six class members testified at deposition about the length of morning meetings. Mr. Breshears inferred an average meeting time for each of the deponents and an average of averages across the six deponents. The average of the averages was 23.75 minutes. Mr. Breshears used this 23.75 figure to estimate the length of morning meetings for all 387 class members.[27] Mr. Breshears assumed that every class member attended a morning meeting every day that he or she drove for Exel. He assumed further that class members were not paid for this time and were due minimum wages for the time spent in the meeting.

B. MR. BRESHEARS' CONCEPTUAL ERRORS

Failure to Recognize Hiring and Subcontracting by Class Members

56. Mr. Breshears fails to account for the fact that class members employed other people to drive for them. For example, one class member testified at deposition that he has not personally driven pursuant to his contract with Exel in approximately three years.[28] Another class member testified about an "absentee contractor" that he had once driven for, and stated that the contractor

[27] Although Mr. Breshears assumes that there are 387 class members in the data, the figure is in fact 386 once an adjustment is made for class member Jose Cano appearing in the data under two separate contractor numbers.

[28] Deposition transcript of Abel Barajas Montes, pp. 28-29

has not driven since the first day of his contract.[29] Another class member testified that he has had as many as four drivers and five trucks at a time working for him pursuant to his Exel contract.[30] Mr. Breshears' failure to account for class members employing or subcontracting other people to drive for them undermines his estimates in each damages category—reimbursable expenses, unpaid overtime premiums, meal period or rest break premiums and time spent at morning meetings.

57. Some or all of the deductions from a class member's settlement and some or all of the operating expenses that they paid directly may have been for expenses related to the class members' business of supplying equipment and third party labor to Exel for truck delivery services rather than relating to their own personal driving on Exel's behalf. Similarly, if a class member was not actually providing services to Exel on a given day, but rather had employees or subcontractors provide such services, then that class member cannot have put in any overtime for Exel that day, missed any meal periods or breaks while working for Exel that day, or worked on an uncompensated basis for Exel that day. As Mr. Breshears' calculations all assume that each class member personally worked for Exel every day that the iDirect records show one of the class member's trucks being in use, Mr. Breshears thereby overstates a) expenses incurred in class members' capacity as putative employees, b) potential overtime, c) potential meal periods, d) potential rest breaks and e) potential morning meeting time.

Erroneous Reliance on Mr. Curtis

58. Mr. Breshears relies on Mr. Curtis's cost categories and estimates. Therefore, Mr. Breshears' cost estimates are not limited to costs that class members actually incurred or costs that were due to the class members' classification as contractors with Exel. As discussed above, Mr. Curtis calculates average expenses that truckers may accrue over lengthy periods without considering that many class members drove for Exel for only a short time. He also estimates expenses that even longer-term drivers may not have incurred, because their leasing companies would pay them, because their insurance companies would pay them, or because the class members never incurred them in the first place. Mr. Curtis and consequently Mr. Breshears also include costs that are attributable to the fact that class members owned or leased commercial

[29] Deposition of Jose Alcala, pp. 25-26.

[30] Deposition transcript of Edmundo Vega, pp. 14-16, 19.

trucks. As Mr. Curtis admits, these costs were not caused by the class members' contractual relationship with Exel. These types of expenses are particularly relevant in light of the fact that many class members owned or leased trucks prior to contracting with Exel and many used their trucks for other commercial purposes besides personally driving for Exel. These other commercial uses include use by their own employees or subcontractors on Exel's behalf and use on behalf of other delivery companies. Neither Mr. Curtis nor Mr. Breshears make any effort to apportion any of these fixed costs to the other activities class members used their trucks for besides personally making Exel deliveries.

59. Mr. Breshears' reliance on Mr. Curtis's estimates is further problematical because Mr. Breshears' mileage assumptions conflict with Mr. Curtis's mileage assumptions. Mr. Curtis based his cost per mile estimates on three different assumptions about miles per year—36,000, 39,360 and 42,000. Mr. Breshears relied on the cost per mile estimates that Mr. Curtis derived assuming class members drove *36,000* miles per year, but then Mr. Breshears multiplied that cost per mile by *39,000* miles per year. Many of Mr. Curtis's cost categories are invariant with respect to miles driven (e.g., permits, medical insurance, and all of Mr. Curtis's other "fixed costs"). Consequently, annual costs per mile decline as annual miles increase so that the annual costs are the same regardless of miles driven. Costs will be overstated if the per mile estimate based on 36,000 miles per year is multiplied by 39,000 miles. If Mr. Breshears had used Mr. Curtis's costs per mile based on 39,360 miles rather than his costs per mile based on 36,000, then he would have calculated over $5,000 less in unreimbursed costs per class member per year. Alternatively, Mr. Breshears could have assumed class members drove 36,000 miles per year and continued using Mr. Curtis's 36,000 mile per year cost estimate. This approach would have implied even less in reimbursable expenses than Mr. Breshears calculated by mixing conflicting mileage assumptions. This is so because costs for fuel and other consumables decline as mileage declines. Neither Mr. Breshears nor Mr. Curtis identified any reliable data to support even 36,000 miles per year as the average figure for class members. As DOT regulations do not require mileage information be recorded for drivers operating within a 100 air-mile radius of their normal location, any summary statistics based on available data are likely to overstate miles driven by undercounting short trips.

Baseless Assumptions

60. Mr. Breshears' calculations rely on various assumptions that have no basis in the

discovery record; to the contrary they conflict with it. Mr. Breshears purportedly relied in part on electronic iDirect, Sears and Dispatch data for number of days worked per week by class members. When no such data were purportedly available, Mr. Breshears assumed that class members worked five days per week. Mr. Breshears does not give any explanation for this five day assumption, and it is inconsistent with the data he does have. The iDirect average days worked per workweek is 2.97 and the Dispatch data average days worked per workweek is 4.28.[31] Across both data sources, the average number of days worked per week is 3.63. The number of days worked per week is relevant because Mr. Breshears relies on days worked to arrive at annual mileage figures to apply against Mr. Curtis's cost per mile estimates. Mr. Breshears also assumes that each day worked generates one hour of premium pay for a late or missing meal period, one hour of premium pay for a missing rest break and 23.75 minutes of pay for attending morning meetings. When applying his five days per week assumption, Mr. Breshears also assumes 12 hours per day. Consequently, this days-per-week assumption also affects overtime premium pay. Mr. Breshears' baseless assumption that class members worked five days per week unless proven otherwise affects each of his categories of damages or recovery.

61. Mr. Breshears also assumed that class members worked every week of every year that they were contracted with Exel. Mr. Breshears provides no basis for this assumption. Like his five day assumption, it conflicts with the data. The average number of weeks worked per year from the iDirect data, Dispatch data, and the two combined are 21, 44 and 33, respectively. By overstating the number of weeks worked, Mr. Breshears overstates the number of days worked per year and thus the number of miles driven per year. Consequently, reimbursable expenses, potential premium pay for overtime, late or missing meal periods, missing rest breaks and supposedly unpaid meeting time are also overstated.

62. Mr. Breshears assumed that those class members for whom no Dispatch data were available concerning daily hours worked 12 hours per day. This assumption is also baseless. The Dispatch data show hours worked by 149 class members over the period July 1, 2013 to January 6, 2015. The average hours worked per day in the Dispatch data was 10.38.

63. As discussed above, Mr. Breshears made several baseless assumptions to arrive at an

[31] I distinguish between weeks during which class members were parties to Independent Truckman's Agreements but did not drive for Exel and "workweeks" in which class members did drive for Exel pursuant to Independent Truckman's Agreements.

estimate of the number of shifts lacking timely meal periods and adequate rest breaks. In addition, I understand from Exel's counsel that under California law pay premiums are owed for missed breaks only if the employer failed to provide meal breaks or authorize and permit requisite rest breaks. I understand that pay premiums are not owed if employees choose not to take timely breaks of their own volition. Class members have testified to their choosing when to take meal and rest breaks at their sole discretion.[32] Exel has also testified that class members were free to take breaks whenever they wanted to.[33] Mr. Breshears does not identify any evidence that Exel failed to provide or authorize and permit class members to take timely meal periods or as many rest breaks as they chose. To the contrary, as discussed above, Mr. Breshears reports having reviewed hundreds of daily logs and time sheets showing timely meal periods.[34]

Overstated Regular Wages

64. Mr. Breshears assumed a regular wage rate either of $30 or $18.29 for purposes of calculating premiums. Both are overstated. As I discuss above, market wages were $120 to $150 per day. Accounting for time and half overtime, this corresponds to $10.37 to $12.96 per hour for a 10.38 hour day.

65. Mr. Breshears' $30 hourly wage is based on gross pay to drivers assuming a $24 per stop piece rate and 1.25 stops per hour. Exel witnesses have testified that it intended the pay per stop to compensate for class members' expenses and entrepreneurial activity as well as their labor.[35] It is not a reliable measure of the hourly wage Exel intended to pay for labor alone, or for the wage class members perceived they were receiving for labor alone or for the wage class members necessarily would have earned if they had been classified as employees. It is demonstrably not the wage that employee-truck-drivers earned doing the work that class members did in the local areas in which they operated.

66. Mr. Breshears' $18.29 wage is a national average that is influenced by drivers in different market areas transporting different items under different working conditions than the class

[32] Deposition transcript of Wayne Vivolo, pp. 31-31, 54-59; Deposition transcript of Edmundo Vega, pp. 43-46, 53, 86.

[33] Deposition transcript of Jason Moll, pp. 113-114.

[34] Supplemental Expert Report of David Breshears, CPA/CFF, paragraphs 11 and 13.

[35] Deposition transcript of Renee Albarano, pp. 27-34, 183-184

members. Mr. Breshears acquired this $18.29 figure from the Bureau of Labor Statistics ("BLS"). BLS reports other information besides mean wage as of May 2014 that demonstrates that the national average is not an accurate measure of all competitive pay for drivers in all parts of the country working under all market circumstances. Wages vary over time—most of the damages period was earlier than the May 2014 date pertaining to Mr. Breshears' average. Wages vary by place. Wages vary by specific job requirements. For example, in May 2014 the mean wage for California Light Truck or Delivery Service Drivers was $17.47. In Figure 6, I show mean wages for California Light Truck or Delivery Service Drivers and for the nation as a whole in the subcategory from which Mr. Breshears selected his average over the time period 2008 – 2014. It is tempting to assume that all California pay is high just because San Francisco labor markets are currently very tight. However, Exel did not have facilities in the San Francisco Financial District. Exel drivers worked in Tracy, Sacramento, City of Industry, Ontario, Sylmar, Oakland, Signal Hill, Los Angeles, Milpitas, and San Diego. Also, the damages period is not confined to the present time but occurs primarily during the occurrence and aftermath of the worst financial downturn in several generations.

67. Wages varied by other job specific circumstances. BLS reports data on the dispersion of wages even after holding constant time and geography; dispersion was significant. In Figure 7, I report mean wages by year for the 25^{th} percentile of California truckers in the particular occupational grouping that Mr. Breshears relied upon for his $18.29 wage and the number of California truckers in that occupational grouping who were at or below the 25^{th} percentile in terms of pay. Figure 7 demonstrates that there were generally tens of thousands of truckers employed in California during each year of the damages period earning a similar wage as the $10.37 to $12.96 norm discussed above for drivers hired by class members. By overstating regular wages, Mr. Breshears biases his estimates of all types of premium pay—overtime, double time, meal period and rest break.

Erroneous and Speculative Analysis of Unpaid Time

68. Mr. Breshears' minimum wage related estimates are based on the notion that morning meeting time was unpaid. These estimates are unreliable because of the errors discussed above in determining the number of days class members worked and thus ascertaining the number of meetings they attended. They also rely on speculative inferences about the average length of

morning meetings and the apparently false assumption that morning meetings occurred every workday. They are also flawed in that Mr. Breshears seeks to apply these estimates class-wide but the deponents' testimony covers less than half of the locations operating during the class period.

69. Mr. Breshears estimates the time that the 386 class members spent in morning meetings by drawing inferences from six class members' deposition testimony. Their vague and inconsistent testimony can be summarized as follows.

70. *Herman Johnson*: According to his declaration, Mr. Johnson drove out of Exel's Sears-Sacramento facility from June 31, 2011 (sic) to January 22, 2012.[36] At his deposition, Mr. Johnson testified three times that morning meetings started at 6:15 and once that they started at 6:00.[37] He testified once that he received his schedule "around 6:30 after the meeting," implying that the meetings were over by 6:30 if not sooner.[38] He testified later that meetings were "from 6:15 until around you know 7:00 o'clock or whatever."[39]

71. *Rogelio De La Fuente*: Mr. De La Fuente contracted with Exel from 2007 through 2009. Mr. De La Fuente drove exclusively from Sears locations. At deposition he testified that he drove out of Ontario, San Diego and the Bay. It is unclear what he meant by the Bay, but it could refer to the now-closed Sears location in Milpitas. Regarding morning meetings, Mr. De La Fuente testified that "[t]he meeting would start at 6. At 6:30 we would go to open the boxes to inspect the appliances, and to start loading the truck."[40] Mr. Breshears interpreted this to mean that meetings lasted a half hour.

72. *Juan Saravia*: Mr. Saravia worked out of Exel's Oakland location for approximately three months, from December 2009 through March 2010. Mr. Saravia testified that the morning meetings lasted "10, 15 minutes. It was for a little while just to explain to us things like how to make the deliveries."[41]

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[36] Declaration of Herman Johnson, paragraph 2.

[37] Deposition transcript of Herman Johnson, pp. 43, 89 and 90.

[38] Deposition transcript of Herman Johnson, p. 46.

[39] Deposition transcript of Herman Johnson, p. 89.

[40] Deposition transcript of Rogelio De La Fuente, p. 40.

[41] Deposition transcript of Juan Saravia, p. 51.

73. *Miguel Jauregui*: Mr. Jauregui worked out of Exel's Sears-San Diego location from the beginning of 2011 through the end of 2012. Mr. Jauregui testified that meetings usually lasted, "I don't know – maybe 15, 20 minutes."[42]

74. *Juan Mena*: Mr. Mena has contracted with Exel since 2001. He drives out of Exel's Crate & Barrel-Tracy facility. Mr. Mena testified once at deposition that meetings lasted from 15 to 30 minutes.[43] Later he testified that meetings lasted up to 15 to 30 minutes.[44]

75. *Mazin Yako*: Mr. Yako drove briefly for Exel in June of 2011 out of the Sears-San Diego location. In his declaration, Mr. Yako testified that he drove for one week.[45] At his deposition, Mr. Yako repeatedly claimed that he drove for Exel for two weeks.[46] Mr. Yako's insurance for the truck he drove became effective June 16, 2011, and his Independent Truckman's Agreement indicates that his last day of work was June 24, 2011, thus corroborating his initial testimony that he drove for Exel for one week rather than two. In his declaration and at deposition, Mr. Yako claimed that he drove six days per week, yet the paperwork supporting his settlement demonstrates that he only drove four days in total as an Exel driver ever.[47] Mr. Yako said morning meetings were a half hour.[48]

76. These few deponents who were asked about morning meeting length at all were generally vague and inconsistent. They gave ranges without specifying how frequently meetings were at the bottom of the range as opposed to the top or some length in between. Mr. Breshears assumed that a range meant that the midpoint was a reasonable proxy for the typical occurrence but there is no statistical or logical foundation for that assumption. For example, the federal 2014 minimum wage was $7.25, corresponding to annual pay of approximately $15,000 for a full-time worker. By contrast, Floyd Mayweather earned an estimated $300 million in 2014, so the range of pay for workers in the U.S. was at least $15,000 to $300 million. That does not mean that it is reasonable

[42] Deposition transcript of Miguel Jauregui, p. 54.

[43] Deposition transcript of Juan Mena, p. 44.

[44] Deposition transcript of Juan Mena, p. 47.

[45] Declaration of Mazin Yako, paragraph 2.

[46] Deposition transcript of Mazin Yako, pp. 11, 34, 74, 75, 76, 93, 103.

[47] Declaration of Mazin Yako, paragraph 4. Deposition transcript of Mazin Yako, p. 94 and Exhibit 10.

[48] Deposition transcript of Mazin Yako, p. 50.

to assume that full-time workers' pay is typically in the middle of the range at approximately $150 million.

77. Saying that meetings lasted "maybe 15, 20 minutes" does not necessarily mean they lasted on average 17.5 minutes as Mr. Breshears assumes. Such testimony could just as easily mean that meetings were usually much less than 15 minutes but were occasionally longer, probably not 15 minutes and certainly not 20. The only way to know what "maybe 15, 20 minutes" means would be to ask the deponent clarifying questions. Although Plaintiffs are relying on this vague testimony, they did not ask these questions when they had the opportunity. Similarly, Mr. Breshears interprets Mr. Johnson's testimony stating among other things that morning meetings started at 6:00 or 6:15 and ended at 6:30 to mean that that meetings were generally 30 minutes.[49] Maybe that is what Mr. Johnson meant, but maybe it is not.

78. Mr. Yako was the most definite about the meeting length; he said one-half hour. But Mr. Yako's testimony is demonstrably inaccurate in other respects, namely the length of time he spent as an Exel driver and the number of days he worked per week. Mr. Yako was wrong about these things notwithstanding that he brought with him to his deposition the paperwork proving that he only drove June 21, 2011 through June 24, 2011 inclusive. Casting further doubt on Mr. Yako's deposition testimony is the point that Mr. Jauregui worked out from the same location as Mr. Yako and at the same time, and Mr. Jauregui said the morning meetings were "maybe 15, 20 minutes."

79. Mr. Breshears' extrapolations from these six deponents are speculative and statistically indefensible. It is guesswork even to draw inferences about how long the meetings were that these six deponents attended personally given their vague and conflicting testimony on the topic. Even if there were reliable information about these six deponents' average meeting times, their experiences do not span the entire range of facilities and time periods that are relevant to this litigation. Taken at face value, the testimony suggests meeting length varied by location and over time. Yet there is no information at all about the majority of the locations referenced in the settlement data for the class period. Moreover, except for Tracy, the substantively and geographically limited morning meeting information Mr. Breshears relied on ranges from a few

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[49] See Mr. Breshears Exel file summarizing morning meeting related testimony and explaining the basis for his estimate of 23.75 as average time for morning meetings.

months to two years per location out of a liability period that is seven years and counting.

80. There is literally no basis to assume these six deponents' experiences are representative of the class as a whole. To the contrary, as it is implausible that deponents were selected on a random basis or that it was a statistically random event that these six deponents were asked about meeting lengths but others were not; it is also implausible that these six deponents' experiences are typical in any statistically reliable sense. There is no statistical basis to assume that a non-random sample is representative in some way or to draw inferences about the overall population (here the class) based on the average for the sample (here, six deponents).

81. As a final matter concerning morning meetings, Mr. Breshears is apparently incorrect to assume that they occurred every day. Ray Dailey was the General Manager of the Sears-Sylmar facility from 2005 to 2008 and the Sears-Ontario facility from 2008 to 2011. Mr. Dailey testified that morning meetings did not occur every day and that it was not the case that all drivers attended every morning meeting.[50] Even if Mr. Breshears' information regarding the number of days that class members drove for Exel and the average length of morning meetings were reliable, that would be insufficient to estimate the aggregate amount of time spent at morning meetings by class members individually or by the class members altogether. For each day a class member drove, Mr. Breshears would have to know whether a morning meeting was held at the class member's facility that day and whether the class member attended it in order to measure that class member's meeting time accurately.

Extrapolation

82. In general, Mr. Breshears' attempts to extrapolate from limited deposition testimony are an unreliable methodology. I touch on this above concerning breaks and morning meetings. Survey-related academic work has demonstrated that unaided recall is not reliable and may be subject to bias when the survey respondent has reason to believe there is a "right answer." The potential for bias in this case is clear. The "right answer" is plain to infer and giving the right answer may not only benefit the deponent financially but may also benefit other class members whom the deponent may care about or want to get along with. By "bias," I am not referring necessarily to intentional deception but rather to systematic error in a particular direction that may

[50] Deposition transcript of Ray Dailey, July 17, 2014, p. 44, 45, 49.

not be purposeful but has the same effect on accuracy. Comparison of deposition testimony to Exel's documents tends to undermine confidence in the accuracy and reliability of the deposition transcripts even as representative of the deponents' experiences, let alone the experiences of other people.

83. Dispatch data are available for four of the deponents who testified about the number of hours per day and number of days per week that they tended to work. All four of them apparently overstated their typical hours per day or days per week. Juan Saravia testified that he drove five to six days per week (Dispatch data show an average of 3 days) and worked 12 to 15 hours per day (Dispatch data show an average 10.9 hours). Edmundo Vega testified that he drove four days per week (Dispatch data show 3.7 days) and that he worked eight to 14 hour days (Dispatch data show as few as 3.5 hours per day). Mauricio Torres testified that he worked 10 to 15 hours per day (Dispatch data show an average of 9.2 hours). Juan Mena estimated that he worked seven to 12 hours per day, but Dispatch data show him working on average 6.5 hours per day.

84. Mr. Breshears' extrapolations are further unreliable because the only basis to assume a sample is representative in the statistical sense is if it is selected by a random process. "Random" means a process in which each member of the population (in this case the class) has a known or knowable probability of being selected and the sum of the probabilities equals one. It is not statistically random for deponents to be selected based on counsel's judgment, even if that judgment is intended to create representativeness. Human judgment is not random. It is subject to biases and preconceptions including biases and preconceptions about the degree of variability that may be generated by randomness itself. As it is implausible that the sample of deponents represents a random sample of the class, there is no reliable basis to presuppose that the deponents' experiences are typical.

85. Even if the very limited deposition testimony that Mr. Breshears seeks to rely on were unambiguous, free from recall bias or hazy memory and otherwise reliable as an indicator of the deponents' experiences, there would be no reliable basis to extrapolate to the class as a whole. As the deponents were not picked on a random basis, none of the statistical principles pertaining to random sampling would apply. There would be more reason to assume that the class on average had similar experiences as the deponents regarding breaks or meetings, than to assume that the frequency of breaks among the class on average was a multiple of that for the deponents or a

small fraction of that for the deponents. Mr. Breshears' extrapolations are no more reliable than guessing. Generally speaking, a small sample that is not randomly selected will not be representative of the population as a whole except by extraordinarily improbable random chance.[51]

C. PARTIAL CORRECTIONS TO MR. BRESHEARS' ANALYSIS

86. The errors discussed above inflate Mr. Breshears' damages estimates significantly. To illustrate the impact of Mr. Breshears' conceptual errors, I have attempted to correct several errors simultaneously. I have partially corrected Mr. Breshears' analysis by a) excluding damages that were based on conjecture; b) limiting reimbursements to those expenses per class member for which there is reliable evidence that the class member's driving for Exel caused him to incur an expense of that type; c) limiting overtime and double time premiums to overtime and double time hours for which there is evidentiary support; d) basing pay premiums on a regular wage of $12.96 per hour, the higher end of the estimated range of wages paid to drivers working out of Exel's facilities as employees rather than contractors; e) excluding additional compensation for meeting time as Mr. Breshears does not provide any reliable basis to estimate the number of meetings that class members attended or the duration of such meetings; and f) excluding meal period and rest break premiums from the partially corrected estimates as Mr. Breshears does not provide any reliable basis to infer that Exel did not provide or authorize and permit class members to take meal periods or rest breaks at their sole discretion or to infer the number of untimely meal periods or missing rest breaks that class members experienced.

Excluded Reimbursements

87. "Claims" are a cost that Exel deducted from the settlement payments it made to class members. Mr. Breshears included claims among reimbursable expenses. I excluded "claims" from Mr. Breshears' partially corrected damages model as these are recoveries by Exel from class members for property damages that class members ostensibly caused. I understand that non-exempt employees may be held liable for property damage they cause depending on the specific circumstances giving rise to the claims and the terms of their employment agreements. Mr. Breshears made no effort to determine whether the claims in the settlement data were exclusively,

[51] By "small," I mean to rule out samples that are so large relative to the population that it is arithmetically impossible for them to differ by much in the dimensions of interest.

or even partially, claims of the sort that non-exempt employees would not be required to pay.

88. I excluded truck liability insurance, license, registration and permit fees from Mr. Breshears' partially corrected damages model because these obligations are a consequence of owning or leasing a truck rather than a consequence of driving for Exel. Mr. Breshears made no effort to identify incremental costs attributable to the Exel relationship or to apportion total cost between class members' putatively Exel- related use of their trucks and their use of them for other purposes.

89. I excluded cargo insurance, cell phones, tires, repairs, and maintenance from Mr. Breshears' partially corrected damages model because not all class members incurred such costs as a consequence of their relationship with Exel.

90. I excluded workers' compensation for helpers from Mr. Breshears' partially corrected damages model because not all class members purchased it and because not all helpers worked on trucks that the class members drove personally.

91. I excluded medical insurance from Mr. Breshears' partially corrected damages model because there is no evidence that all class members purchased it and because there is no evidence that those class members who did purchase it would have avoided any of that cost if they had been treated as non-exempt employees by Exel.

92. I excluded tolls from Mr. Breshears' partially corrected damages model because neither Mr. Curtis nor Mr. Breshears present any evidence that all class members paid tolls while driving for Exel or even that Mr. Curtis's toll estimates are likely to approximate the average tolls paid by class members.

93. I excluded Mr. Breshears' and Mr. Curtis's "miscellaneous" costs from Mr. Breshears' partially corrected damages model. Mr. Curtis explained that "miscellaneous" costs are primarily or exclusively speeding tickets and parking tickets. Neither Mr. Breshears nor Mr. Curtis presented evidence that Exel caused any class members to speed or park illegally. Nor did either of them demonstrate that Exel would have reimbursed these costs if class members had been classified as non-exempt employees. Mr. Curtis also suggested that truck washing costs might also be included in miscellaneous costs, but class members did not all necessarily wash their trucks any more frequently as a consequence of their personal driving for Exel either.

94. I excluded fuel because Mr. Breshears' fuel estimates are rooted in speculation about miles class members actually drove and the prices they paid for fuel. Mileage information was available only for the class members for whom there are iDirect data. Mr. Breshears had no mileage information for the remaining class members, and his fuel cost estimates for them are based on an assumed 150 miles driven per day and in most cases additional assumptions about days driven per week. The 150 miles per day assumption is not reliable. Mr. Breshears justifies his assumption of 150 miles per week by reference to Exel spreadsheets related to trucks operating from six East Coast hubs.[52] These spreadsheets incorporate assumptions ranging from 150 miles per day for Weston, Florida to 288 miles per day for Raleigh, North Carolina. Mr. Breshears does not cite any evidence that the mileage assumptions in these spreadsheets are typical mileages for their areas. Taken at face value, these spreadsheets indicate great variation in average mileage by location. Assumed mileage for Raleigh was nearly double the assumed mileage for Weston. The fact that the low assumption for these six cities was 150 does not mean that the author of the document would not have assumed an even lower figure for some other hub.

95. Mr. Breshears' fuel estimates are also based on assumptions about days that class members drove for Exel, and these assumptions are also unreliable. Mr. Breshears assumed that most class members drove five days per week, 52 weeks per year. There is no reliable basis for these assumptions. The iDirect and Dispatch data that Mr. Breshears relied upon for other purposes showed wide variation among class members in days driven per week. The Dispatch data show class members driving only 3.65 days per week on average, and the iDirect data show class members driving only 1.22 days per week.[53]

96. Mr. Breshears' mileage estimates are incorrect even for the minority of class members for whom there are iDirect mileage data. Mr. Breshears did not limit his mileage to miles that the class members actually drove. Rather, he based his estimates on miles that their trucks logged. Class members frequently hired other people to drive for them. Roughly 39% of the observations in the iDirect data involved a subcontractor or employee driving for a class member.

97. Mr. Breshears' estimates of fuel consumption are not only speculative because they ultimately rely on speculation about miles driven and thus about fuel consumption, but they also

[52] EDV012864.

[53] These averages are calculated as days per workweek that contractors personally drove on behalf of Exel multiplied by the percentage of weeks per year in which they drove at least one day.

rely ultimately on speculation about fuel prices. Mr. Curtis and Mr. Breshears based their fuel costs on an average price of $3.96 per gallon for ultra low sulfur fuel. Mr. Curtis retrieved annual prices from the U.S. Energy Information Administration web site for the years 2009 - 2014. Mr. Curtis reports annual prices of $2.607, $3.157, $4.084, $4.23, $4.126 and $4.004. Although the average of these prices is $3.71, Mr. Curtis reports the average to be $3.97, and that is the figure he uses for his fuel cost estimates.

98. The price data at the USEIA web site reflect widely varying prices for fuel by month. Over the period January 2009 through December 2014, prices ranged from a low of $2.139 to a high of $4.474. Even if Mr. Curtis had calculated the simple average correctly, that average would only be appropriate to measure the average class members' experience if class members' miles were distributed uniformly over the period January 2009 through December 2014 and if class members had paid average prices. There is no reason to believe either circumstance to be the case, and there are plausible reasons why they may not be so. For example, fuel prices were lower in 2009 and 2010 when the economy was particularly weak. Class members may have been more likely to drive themselves rather than add second trucks or hire other people to drive for them during this recessionary period, so their fuel purchases related to their personal driving may have occurred disproportionately during times when fuel prices were low. Regarding class members paying average prices, one reason to adopt a contractor model for drivers would be to incentivize drivers to reduce costs including finding and patronizing lower-priced fuel vendors. Ultimately, the only reliable way to ascertain the prices class members paid for fuel or the amount of fuel they purchased would be to analyze their financial records.

99. Finally, I excluded depreciation from Mr. Breshears' partially corrected damages model. Class members who leased did not necessarily suffer any incremental depreciation costs. Moreover, true economic depreciation suffered by class members who owned their own trucks would depend on individualized circumstances that Mr. Curtis and Mr. Breshears did not consider.

Remaining Reimbursements

100. After excluding the cost categories above, remaining expenses include equipment, background checks for contractors who signed their Independent Truckman's Agreements after June 3, 2008, DOT physical costs, and helper wages.

101. Mr. Breshears estimated helper wages based on days class members drove. His estimates were flawed because they relied on baseless assumptions that class members whom he knew nothing about drove five days per week and 52 weeks per year. He also assumed without basis that other class members for whom he had Dispatch data for a portion of their contract terms must have driven the same number of days on average during time periods for which he has no data about them as they did during the period for which he does have data. Finally, Mr. Breshears did not distinguish between days that a class member drove and days that the class member's truck was driven. I have limited Mr. Breshears' helper wage estimates to wages for helpers on days that class members personally drove for Exel based on iDirect data or Dispatch data.[54]

102. I left Mr. Breshears' estimates of costs for background checks and DOT physicals unchanged. He relied on settlement deductions. This method undoubtedly overstates class members' total costs for background checks and physicals for themselves and for helpers working with them because class members sometimes paid for background checks and physicals for drivers whom they hired and for helpers for drivers whom they hired.

103. I left Mr. Breshears' estimates of costs for equipment unchanged. He relied on settlement deductions, which may tend to overstate class members' total equipment costs for trucks they drove personally because class members sometimes may have paid for equipment for trucks other than those they drove personally. Class members may also have used equipment that they purchased from Exel for other things besides Exel deliveries.

104. I left unchanged Mr. Breshears' assumption that helpers earned $100 per day. Overall, partially corrected helper costs are still likely overstated as not all class members worked with helpers, and not all class members paid helpers $100 or more.[55]

105. I show the results of these partial corrections to Mr. Breshears' damages model in Figure 8.

VII. CONCLUSION

106. Based on the Plaintiffs' experts' cost models and assumptions, the class members in this

[54] Mr. Breshears did not use the third data source, Sears data.

[55] Deposition transcript of Victoriano Molina, p. 146 concerns driving without a helper. Deposition transcript of Herman Johnson, p. 42 concerns paying a helper $80 per day.

case were generally compensated at significantly higher levels than if they had been paid the prevailing wages for their specific work in their specific geographic markets. Some class members hired full time workers to do the exact same work at issue in this case and had enough left over after paying these workers' wages and all of the other expenses required under their Independent Truckman's Agreements to earn a profit. Consequently, class members will not suffer financially if their recoveries in this case are limited to reimbursement for expenses that they actually incurred as a consequence of their work as drivers for Exel, and overtime and double time premiums only for overtime and double time hours supported by evidence.[56]

107. Mr. Breshears' estimates of reimbursable expenses, pay premiums and wages due for uncompensated meeting time are unreliable because he relies on unsubstantiated assumptions by Mr. Curtis and because Mr. Breshears' methodology is invalid. Mr. Breshears' model includes reimbursement for expenses that were not attributable to class members' personal work as drivers. It includes reimbursements to some class members for expenses they are unlikely to have incurred at all and it includes reimbursements to other class members for expenses that may not have been caused by their personally driving for Exel. Further, Mr. Breshears relies on baseless assumptions about how many days per week and weeks per year class members drove for Exel to arrive at inflated estimates of their reimbursable expenses, overtime hours, number of potential meal periods, number of potential rest breaks and number of potential morning meetings.

108. Mr. Breshears' estimates of meal period and rest break pay premiums are inflated because he assumed, with few exceptions, that class members never took the meal periods or breaks they were entitled to. Mr. Breshears cites no evidence of any type, reliable or not, to support this assumption. Indeed, Mr. Breshears' own supplemental report focuses on documents that refute it.

109. Regarding morning meetings, Mr. Breshears extrapolates from vague, internally inconsistent and demonstrably inaccurate deposition testimony by six, unrepresentative deponents—one of whom drove for Exel on four occasions, another of whom drove only for three months—to infer the average length of morning meetings attended by the whole class. Mr.

[56] I understand Exel disputes whether these drivers are entitled to overtime and has taken the position that, even if they are reclassified as employees, they are exempt from the payment of overtime.

Breshears then extends this shaky average to estimate total meeting time for each and every class member by assuming that each Exel facility had meetings every morning that were attended by every driver working from that facility that day. This assumption directly contradicts the testimony by the former General Manager at two facilities that morning meetings were not every day and that not all drivers attended meetings when they did occur. Finally, Mr. Breshears calculates premium pay on a hypothetical regular wage that is roughly triple the wage that class members pay non-class-members to do the same work at issue in this case.

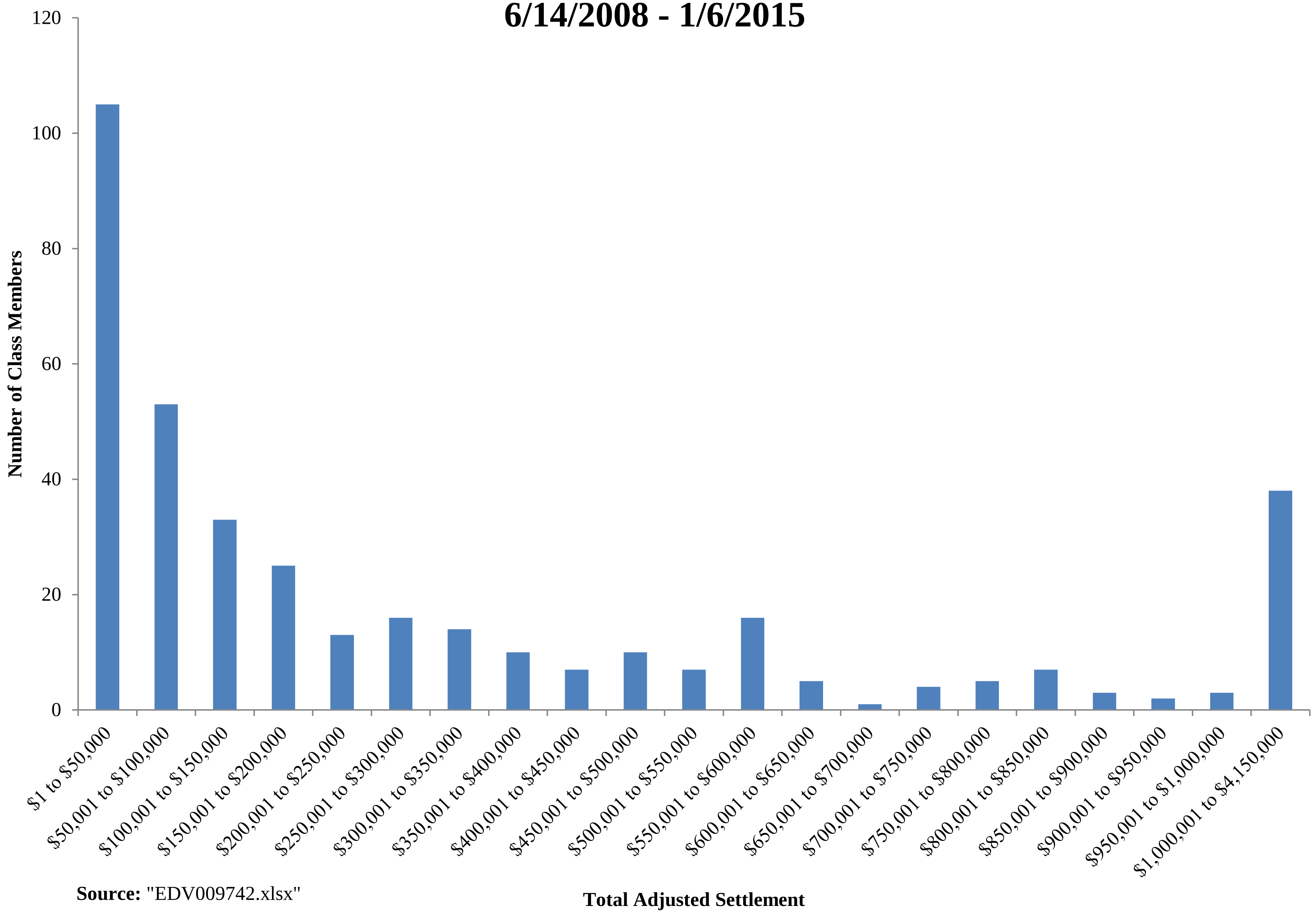
110. In short, Mr. Breshears' calculations often are not based on evidence of record and, even when they are, amount to extrapolations from small, non-representative samples that are not reliable from any sound economics or statistical perspective.

I declare under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed on December 18, 2015 at San Francisco, California.

Jonathan Walker

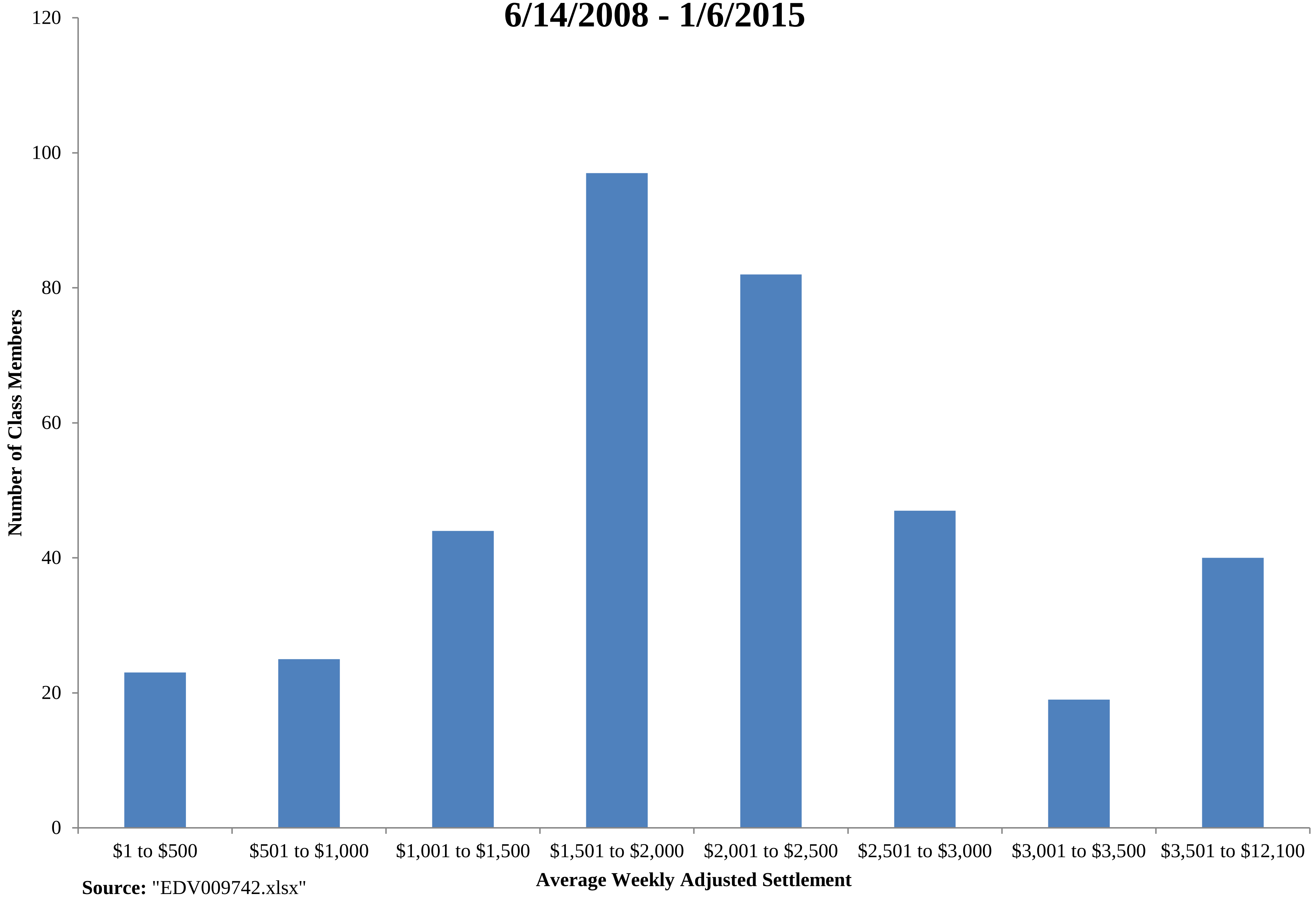
Figure 1 - Class Members' Total Adjusted Settlement
6/14/2008 - 1/6/2015



120
100
80
60
40
20
0
Number of Class Members
$1 to $50,000
$50,001 to $100,000
$100,001 to $150,000
$150,001 to $200,000
$200,001 to $250,000
$250,001 to $300,000
$300,001 to $350,000
$350,001 to $400,000
$400,001 to $450,000
$450,001 to $500,000
$500,001 to $550,000
$550,001 to $600,000
$600,001 to $650,000
$650,001 to $700,000
$700,001 to $750,000
$750,001 to $800,000
$800,001 to $850,000
$850,001 to $900,000
$900,001 to $950,000
$950,001 to $1,000,000
$1,000,001 to $4,150,000
Total Adjusted Settlement

Source: "EDV009742.xlsx"

Figure 2 - Class Members' Average Weekly Adjusted Settlement
6/14/2008 - 1/6/2015


120
100
80
60
40
20
0
Number of Class Members
$1 to $500
$501 to $1,000
$1,001 to $1,500
$1,501 to $2,000
$2,001 to $2,500
$2,501 to $3,000
$3,001 to $3,500
$3,501 to $12,100
Average Weekly Adjusted Settlement

Source: "EDV009742.xlsx"

Figure 3 - Class Members' Weekly Adjusted Settlement
6/14/2008 to 1/6/2015

	All Class Members
Average	$2,262
Median	$1,999
Standard Deviation	$1,552
Top Earner	$12,101
90th Percentile	$3,611
75th Percentile	$2,589
25th Percentile	$1,534
Count	377

Source: "EDV009742.xlsx"

Figure 4 - Class Members' Weekly Adjusted Settlement
by Service Term
6/14/2008 to 1/6/2015

	Class Members Providing Services for 6 Months or Less	Class Members Providing Services for Over 6 Months
Average	$1,280	$2,515
Median	$1,376	$2,182
Standard Deviation	$700	$1,633
Top Earner	$2,594	$12,101
90th Percentile	$2,197	$4,192
75th Percentile	$1,838	$2,791
25th Percentile	$673	$1,705
Count	69	289

Source: "EDV009742.xlsx"
Note: Data begins 6/14/2008 and ends 1/6/2015. Class Members teriminated before 12/14/2008 or beginning after 7/6/2014 are not counted in the "Under 6 Months" category.

Figure 5 - Deponent Driving Days Per Week in Breshears Model

Deponent	Breshears Assumption of Driving Days Per Week
Alancastro, Jose	5.0
Barrera Aguiler, Asuncion	2.5
Delafuente, Rogelio	5.0
Diaz, Daniel	5.0
Johnson, Herman Olen	5.0
Mena, Juan	6.4
Molina, Victoriano	1.0
Montes, Abel Barajas	4.8
Padilla, Lazaro	3.6
Roumbanis, Theodore Richard	5.0
Shekur, Tafiti	5.0

Source: "Settlement Model.xlsx"

Figure 6 - Mean Hourly Wages for Light Truck or Delivery Services Drivers

Year	National - General Freight Trucking Subcategory	California - All Industry Subcategories
2008	$16.75	$15.19
2009	$17.27	$16.15
2010	$17.60	$16.42
2011	$17.44	$16.74
2012	$17.65	$16.91
2013	$17.67	$16.98
2014	$18.29	$17.47

Source: "BLS Ocupational Employment Statistics", as of May of each year.

Figure 7 - Mean Hourly Wages for the 25th Percentile of California Light Truck or Delivery Services Drivers

Year	25th Percentile Mean Wages	Number of Truckers at or Below 25th Percentile
2008	$10.82	24,475
2009	$11.26	24,055
2010	$11.22	22,688
2011	$11.31	22,140
2012	$11.10	20,573
2013	$11.01	20,315
2014	$11.10	21,518

Source: "BLS Ocupational Employment Statistics", as of May of each year.

Figure 8 - Partial Correction to Breshears Damage Analysis

	Overtime Wages	Double Time Wages	Helper Costs	Equipment	Background Checks / Vehicle Records	DOT Physical Costs	Total Damages
Total	$1,904,401	$203,414	$5,638,800	$115,194	$141,002	$38,663	$8,041,473
Class Member Average	$12,781	$1,365	$27,506	$302	$369	$101	$20,833

Source: "EDV109809_MXDEncompassDataExportDetails.xlsx", "EDV009742.xlsx", "EDV086927.xlsx"

APPENDIX A

Economists
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Education

Ph.D., Economics, Massachusetts Institute of Technology, 1991

A.B., Economics, University of California, Berkeley, 1983

Fellowships, Honors and Awards

1986: American Economics Association Doctoral Fellowship

1983: National Science Foundation Graduate Fellowship

1983: Honors in General Studies, University of California, Berkeley

Fields of Concentration

Industrial Organization, Labor Economics, Economic History

Professional Experience

2003 – Present: President, Economist Incorporated

2001 – 2002: Principal, Economists Incorporated

1998 – 2000: Senior Vice President, Economists Incorporated

1996 – 1998: Vice President, Economists Incorporated

1990 – 1996: Senior Economist, Economists Incorporated

1988 – 1990: Management Consultant, Monitor Company, Cambridge, Massachusetts

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Professional Experience (Continued)

1987 – 1988: Visiting Research Fellow, Federal Reserve Bank of Boston, Boston, Massachusetts

1987: Teaching Assistant, Massachusetts Institute of Technology

Dissertation

Essays on the Commercial Banking Industry

Publications

"Discounting Lost Future Earnings," *Economists Ink*, Summer 2015 (with Erica Greulich)

"DTB and the Use of Regression Analysis to Assess Market Definition and Competitive Effects," *Antitrust Law Section of the American Bar Association*, Economics Committee Newsletter, Spring 2011 (with Erica Greulich)

"Preparing for Trial: Expert Economic Testimony," *Antitrust Section of the American Bar Association 59th Spring Meeting*, Continuing Legal Education Written Materials,
March 2011

"The Single Entity Issue in American Needle and DTB," *Westlaw Journal Antitrust*, Volume 18, Issue 1, April 2010 (with Erica Greulich)

"Event Studies, Toxic Stock and Non-Compete Provisions," *Economists Ink*, Fall 2005

"Statistical Evidence and a Daubert Challenge in a Recent Discrimination Case," *Economists Ink*, Summer 2004

"Price Increases Attributable to Patent Infringement or Entry," *Economists Ink*, Spring 2004 (with Tessie Su)

"Ninth Circuit Expounds on Antitrust Injury," *Economists Ink*, Fall 2003

"The Deterrence Value of Punitive Damages," *Economists Ink*, Fall 2001 (with Laura Malowane)

"Recent Developments in Bank Merger Competition Policy," *Banking Law Review*, Spring 1992 (with Bruce Snapp and David Balto)

"U.S. Bank Merger Competition Policy," *International Merger Law 16*, December 1991 (with Bruce Snapp)

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Publications (Continued)

"Not So Safe Harbor for Bank Mergers," *Economists Ink*, Winter 1991

Panels

87th Annual Conference of the Western Economics Association International, "Sports Economics on Trial," June 30, 2012 – Symposium panelist

American Bar Association Antitrust Section Annual Meetings, March 9, 2011 – Presentation concerning preparation for economic trial testimony

American Law Institute – American Bar Association Course of Study, "Antitrust Law in the 21st Century," September 14-15, 2000 – Presentation concerning the economics of professional sports leagues

American Bar Association Antitrust Section Annual Meetings, April 14, 1999 – Presentation concerning the economic foundations of antitrust law

National Economists Club Educational Foundation, "What Effect Will Financial Restructuring Have On Banks?" August 13, 1991 – Moderator

Board Memberships

Economists Incorporated

SF-Marin Food Bank

Expert Reports and Testimony

United States ex rel. *Landis v. Tailwind Sports Corp., et al.* – Expert report on behalf of plaintiff concerning damages

The West Virginia Investment Management Board et. al. v. The Variable Annuity Life Insurance Company – Expert report and deposition testimony on behalf of defendant concerning damages

In Re Taco Bell Wage and Hour Actions – Expert reports (2) and deposition testimony on behalf of the defendant concerning liability and remedies

In Re: Processed Egg Products Litigation – Expert reports (4) and deposition testimony on behalf of defendants concerning antitrust damages

Peter Sripramot v. Nor Cal Freight Mgmt., Inc., et al. – Expert report on behalf of defendant concerning damages

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Expert Reports and Testimony (Continued)

Moroccanoil Inc., v. Marc Anthony Cosmetics, Inc., et al. – Expert report and deposition testimony on behalf of plaintiff concerning trademark infringement remedies

Isidro Baricuatro, Jr., et al. v. Industrial Personnel and Management Services, Inc., et al. – Expert report and deposition testimony on behalf of defendants concerning Fair Labor Standards Act and contract damages

Ameira Watters v. General Motors LLC, et al. – Expert report on behalf of defendants concerning damages

Louis Cimaglia v. Royal Pontiac Buick GMC Inc., et al. – Expert report on behalf of defendants concerning damages

United States v. Bank of America Corp. et al. – Expert report and deposition testimony on behalf of defendants concerning financial harm

Diane Zwarg v. BB&T Insurance Services of California, Inc., et al. – Trial and deposition testimony on behalf of defendants concerning damages

Ritchie Risk - Linked Strategies Trading (Ireland), Ltd., et al. v. Coventry First LLC, et al. – Expert report and deposition testimony on behalf of defendants concerning economic loss

In Re: BDO Seidman – Expert report and deposition testimony on behalf of defendant concerning damages from alleged breach of professional responsibility

U.S. SEC v. Ralph Cioffi – Deposition testimony on behalf of defendant concerning hedge fund operations

Ultra Internet Media, S.A., et al. v. Caesars License Company, LLC et al. – Expert report on behalf of defendants concerning damages

Lauren Knowles v. Kelly Buick, Inc., et al. – Expert report on behalf of defendants concerning economic loss

Kenneth D. Klaas, et al. v. Vestin Mortgage Inc., et al. – Expert reports (2) on behalf of defendants concerning contract damages

Tyr Sport, Inc. v. Warnaco Swimwear, Inc., United States Swimming, Inc., et al. – Expert report on behalf of defendants concerning antitrust liability

United States of America v. Ralph Cioffi and Matthew Tannin – Testimony at criminal trial on behalf of defendants concerning hedge fund operations

Expert Reports and Testimony (Continued)

Charles M. Felton et al. v. Vestin Realty Mortgage II, et al. – Deposition testimony and testimony at a bench trial on behalf of defendants concerning contract damages

National Union Fire Insurance Co. of Pittsburgh, PA v. Puget Plastics Corporation et al. – Deposition testimony and testimony at a bench trial on behalf of plaintiff concerning lost profits and diminution in business value

Deutscher Tennis Bund, et al. v. ATP Tour Inc. – Expert reports (2), deposition testimony and testimony at a jury trial on behalf of defendant concerning antitrust liability

John Johnson, et al. v. Big Lots Stores, Inc. – Expert reports (2), declarations (2), deposition testimony, and testimony at a bench trial on behalf of defendant concerning alleged violation of Fair Labor Standards Act

MGP Ingredients, Inc. v. Mars, Inc. and S&M NuTec, LLC – Expert report and deposition testimony on behalf of defendant concerning damages

In Re: H Street Building Corporation – Deposition testimony on behalf of defendant concerning damages

In Re: The National Benevolent Association of the Christian Church (Disciples of Christ), et al. – Expert report, rebuttal report and deposition testimony on behalf of plaintiff concerning damages

Chemical Overseas Holdings Inc., et al. v. Republica Oriental Del Uruguay, et al. – Expert report, supplemental report and arbitration testimony on behalf of respondents concerning damages

In Re: Lockheed Meridian, MS Shooting Incident – Expert reports (3) and deposition testimony on behalf of defendant concerning damages

John D. Wee v. Charles Schwab & Co., Inc. – Arbitration testimony on behalf of plaintiff concerning damages

In Re: Robin Singh d/b/a Test Masters – Expert reports (2), declaration and deposition testimony on behalf of plaintiff concerning damages

Patrick J. Cunningham and Anton N. Zanki v. International Business Machines Corporation – Expert report, rebuttal report and deposition testimony on behalf of defendant concerning alleged breach of contract

Mark Hodges, et al. v. Greater Canton Ford Mercury, Inc., et al. – Expert report on behalf of defendant concerning punitive damages

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Expert Reports and Testimony (Continued)

In Re: Frank T. Vega – Declaration on behalf of defendant concerning damages

Martin Leach v. Ford Motor Co. – Expert report on behalf of defendant concerning the corporate officer labor market in a breach of contract suit

Westways World Travel, Inc. and Sundance Travel Service v. AMR Corp., et al. – Expert report and deposition testimony on behalf of defendants concerning compensatory damages

Traci A. Savage v. Ford Motor Co. – Expert report on behalf of defendant concerning the economics of punitive damages

Randy Eugene Wheeler v. Ford Motor Co. – Deposition testimony on behalf of defendant concerning lost NFL earnings and other alleged damages

David Braswell v. Holley Performance Products Inc. – Expert report and rebuttal on behalf of defendant concerning antitrust liability and antitrust damages

Ertha Mae Williams v. CSX Transportation Inc., et al. – Deposition testimony on behalf of defendants concerning the economics of punitive damages

R. Straman Co. and Newport Convertible Engineering, Inc. v. Volkswagen of America, et al. – Deposition testimony on behalf of defendants concerning antitrust liability and antitrust injury

Roll International Corporation and Paramount Farms, Inc. v. Unilever United States, Inc. and Conopco, Inc. – Testimony at jury trial on behalf of defendants regarding compensatory damages for alleged breach of contract and false promise

Newhall Land and Farming Co. v. Kerr McGee Operating Corporation, et al. – Deposition testimony on behalf of defendants concerning the economics of punitive damages

Marcia Spielholz, et al. v. Los Angeles Cellular Telephone Company, et al. – Expert report on behalf of defendants concerning remedies in a class action false advertising suit

David N. Orrik v. Stryker Corporation, et al. – Deposition testimony on behalf of defendants concerning the economics of punitive damages

Agneta Karlsson, et al. v. Michael A. Savage – Deposition testimony on behalf of defendants concerning the economics of punitive damages and product liability

Expert Reports and Testimony (Continued)

Homestore, Inc. v. America Online – Expert report and arbitration testimony on behalf of respondent concerning damages from breach of contract

Michael Meitus, et al. v. Dain Rauscher Wessels, Dain Rauscher Corporation and Dain Rauscher Inc. – Arbitration testimony on behalf of claimants concerning the competitive structure of the securities industry and other economic matters

In Re: 1994 Exxon Chemical Plant Fire – Expert report on behalf of defendant concerning the economics of punitive damages

Avis Buchanan, et al. v. Consolidated Stores Corp. – Declaration and deposition testimony on behalf of defendant concerning statistical and other economic analyses in a class action public accommodations suit

State of Alabama v. Exxon Corporation – Affidavit and testimony at post-trial hearing on behalf of defendant concerning the economics of punitive damages

Aspen Knolls Corp., et al. v. McDermott Will & Emery – Expert report on behalf of defendant concerning damages in a legal malpractice suit

Legi-Slate Inc. v. Thomson Information Services Inc. – Expert reports (2) and deposition testimony on behalf of plaintiff concerning damages from breach of contract

United States of America ex rel., *William I. Koch and William A. Presley v. Koch Industries, Inc., et al.* – Expert report, deposition testimony and testimony at jury trial on behalf of defendants concerning economic issues in a False Claims Act suit

Ronald O. Lewis v. Booz-Allen & Hamilton Inc. – Expert reports (4) and deposition testimony on behalf of plaintiff regarding statistics and damages in an employment discrimination suit

Richard Rodgers Mason v. Ford Motor Company – Expert report and deposition testimony on behalf of defendant regarding liability in a product liability suit

Dr. Michael J. Galvin v. The New York Racing Association, Inc., et al. – Expert report and declaration on behalf of defendant regarding commercial damages in breach of due process and tortious interference suit

Expert Reports and Testimony (Continued)

Roll International Corporation and Paramount Farms, Inc. v. Unilever United States, Inc., et al. – Deposition and bench trial testimony on behalf of defendants regarding business valuation and damages in a breach of contract and fraudulent misrepresentation suit

Yvonne Trout, et al. v. John Dalton, et al. – Affidavit and declaration on behalf of the United States concerning prejudgment interest

Willie Brown Jr., et al. v. General Motors Corporation – Testimony at deposition and jury trial concerning lost NFL player earnings

Royer Homes of Mississippi, Inc., et al. v. Redman Homes, Inc., et al. – Affidavits (2), expert reports (2) and deposition testimony on behalf of defendants concerning antitrust liability and damages

W. C. and A. N. Miller Companies v. United States of America – Expert report and deposition testimony on behalf of defendant concerning commercial damages in a Federal Tort Claims Act suit

SMS Systems Maintenance Services, Inc. v. Digital Equipment Corporation – Expert report and deposition testimony on behalf of defendant concerning antitrust damages and liability

Francis W. Murray and FWM Corporation v. National Football League, et al. – Expert report and deposition testimony on behalf of defendants regarding market definition, alleged anticompetitive conduct and alleged antitrust injury

Michael A. Willner v. Dow Jones & Company, Inc., et al. – Deposition testimony on behalf of defendants regarding damages in a breach of contract and unfair dealing suit

Dream Team Collectibles, Inc. v. NBA Properties, Inc. – Expert reports (2) and deposition testimony on behalf of NBA Properties regarding damages and other economic issues in a trademark infringement suit and counter suit

Breezevale Limited v. Timothy L. Dickinson, et al. – Deposition and jury trial testimony on behalf of defendants regarding commercial damages in a legal malpractice suit

Sonja Lumpkin v. Citizens Bank of Maryland, Incorporated – Affidavit on behalf of defendant regarding damages in a wrongful termination suit

Expert Reports and Testimony (Continued)

Carolee Brady Hartman, et al. v. Joseph Duffey – Declarations (7) and live testimony at four Teamsters Hearings on behalf of the defendant, the United States Government, regarding damage estimation in a class action sex discrimination suit

Robert B. Reich v. Charles I. Brown, Peter M. Mazula, and Ronald F. Nuzman – Affidavit and deposition testimony for United States Department of Labor regarding alleged breach of fiduciary responsibility under ERISA

United Farmers Agents Association, Inc. v. Farmers Insurance Exchange, et al. and Thomas J. Vinson, et al. v. Farmers Insurance Exchange, et al. – Affidavit and deposition testimony for plaintiffs regarding antitrust liability

Anthony Brown, et al. v. Pro Football, Inc. – Testimony for defendants, the member clubs of the NFL, at jury trial regarding antitrust damages

Robert E. Connor, et al. v. Harris County, et al. – Deposition testimony and a written declaration for plaintiffs, members of a class of job applicants, regarding a cost defense for allegedly discriminatory employment practices

Laura Kelber against Forest Electric Corp. and Forest Datacom – Affidavit in opposition to defendants' motion for summary judgment in a sex discrimination suit

Selected Consulting Matters

Ernst & Young/KPMG – Antitrust consulting regarding potential consolidation

NASCAR Souvenirs – Consulting for defendants concerning class certification in an antitrust matter

First Databank – Antitrust consulting regarding acquisition of Medi-Span Inc.

Metal Supermarkets – Consulting for plaintiff regarding commercial damages arising from legal malpractice

Vulcan – Antitrust consulting regarding the acquisition of an Atlanta quarry

Brodus v. Children's National Medical Center – Consulting regarding damages in a wrongful termination suit

International Paper – Antitrust consulting regarding photographic paper and other photographic material

Economists INCORPORATED

Selected Consulting Matters (Continued)

St. Louis Convention and Visitors Commission v. National Football League, et al. – Antitrust consulting regarding franchise relocation

The Baltimore City Paper – Consulting regarding commercial damages allegedly arising from libel

Allied Domecq – Consulting for liquor supplier regarding terminated dealer's lost profits

National Football League – Consulting regarding trademark and antitrust issues in suits between the Dallas Cowboys and its affiliates and the NFL

IndyCar Racing – Antitrust consulting

Albertson's – Antitrust consulting for potential plaintiff in a price-fixing matter

New Orleans Hospitals – Antitrust consulting regarding a joint venture among New Orleans hospitals

General Dynamics – Consulting for plaintiff regarding damages in commercial litigation

Telecom Technical Services, et al. v. ROLM – Consulting for plaintiffs in antitrust litigation

The Boston Herald – Consulting regarding damages allegedly caused by publication of a news story

Automotive Dismantlers and Recyclers Association v. ADP Claims Solutions Group, Inc. – Antitrust consulting regarding used automobile parts databases

Mercy/St. Vincent – Consulting regarding the merger of two hospital systems in Toledo, Ohio

Kalium/IMC – Consulting regarding the merger of Kalium and IMC

Agricultural Chemicals Antitrust Litigation – Antitrust consulting for defendants, Zeneca Corp., Helena Corp. and Terra Corp. in an RPM class action suit

The Clorox Company v. Sterling Winthrop, Inc., et al. – Antitrust consulting for plaintiffs in litigation alleging misuse of trademark protections for anticompetitive gain

Selected Consulting Matters (Continued)

Chittenden Corporation – Antitrust consulting regarding a bank holding company's acquisition plans

National Basketball Association – Damage estimation for the NBA in antitrust suit brought against it by Independent Entertainment Group Incorporated

Magic Line Inc. – Merger of ATM networks

Home Shopping Network – Ex-post valuation of contingent contract concerning software and consulting services

Lenfest Group, Comcast Corporation and Telecommunications Incorporated – Consultation regarding Delaware Public Service Commission rules to implement the Telecommunications Technology Investment Act

Worthen Financial Corporation – Acquisition of Union National Bank of Arkansas

Intrust Bank – Merger with Kansas State Bank & Trust

Iowa National Bankshares – Merger with MidAmerica Savings Bank

First National Bank of Kerrville – Acquisition of Bank of Kerrville

Peoples Heritage Financial Group – Acquisitions of Mid Maine Savings Bank, Bank of New Hampshire, CFX, and certain branches of Fleet Bank of Maine

Potash Antitrust Litigation – Antitrust consulting for defendants in a class action suit alleging price fixing in the potash industry

R&D Business Systems, et al. v. Xerox Corporation – Antitrust consulting for plaintiffs in a class action suit alleging tying and monopolization in the copier and printer industries

Society Corp. – Acquisition of Ameritrust

VDDE Holm, Voest Alpina, Bohler – Antitrust consulting in connection with the merger of two European steel manufacturers

McNeil, et al. v. NFL – Estimation of damages resulting from player reservation system

Economists INCORPORATED

Selected Consulting Matters (Continued)

U.S. Department of Justice v. City of Alhambra, California – Analysis of evidence of discriminatory hiring practices

Christiana Mortgage Brokers, et al. v. Delaware Trust, et al. – Estimation of damages resulting from tortious interference in the mortgage brokerage industry in New Castle County, Delaware

Merger of Two Savings and Loan Assns. – Antitrust consulting in connection with the merger of two thrift institutions

Mid Atlantic Coca-Cola – Analysis of evidence of price fixing and estimation of resulting damages

Professional Societies

American Economics

Association American Bar

Association Industrial

Organization Society Western

Economics Association

American Law and Economics Association

Society of Labor Economists

APPENDIX B

Appendix B
Materials Relied Upon

Expert Report of David Breshears, CPA/CFF, August 28, 2015
Expert Report of Wesley B. Curtis Jr., August 28, 2015
Amended Expert Report of Wesley B. Curtis Jr., October 30, 2015
Supplemental Expert Report of David Breshears, CPA/FF, October 30, 2015

Order RE Cross Motions for Summary Judgement, Case: 12-cv-04137-JCS, Filed 9/03/15
Plaintiff's Colsolidated First Amended Complaint, Case:12-cv-04137-JCS, Filed 10/28/2013

Deposition of Asuncion Aguilera, August 12, 2014
Deposition of Jose A.C. Alancastro, August 11, 2014
Deposition of Renee Albarano, May 12, 2015
Deposition of Renee Albarano, October 29, 2013
Deposition of Jose Alcala, October 15, 2015
Deposition of Henry Capotosto, July 11, 2014
Deposition of Byron Cifuentes, June 3, 2015
Deposition of Ray Dailey, July 17, 2014
Deposition of Rogelio De La Fuente, August 12, 2014
Deposition of Miguel A. Jauregui, August 22, 2014
Deposition of Herman Olen Johnson, August 13, 2014
Deposition of Mario Magdaleno, May 27, 2015
Deposition of Kenneth Mangen, June 2, 2015
Deposition of Vladimir Marinov, August 20, 2014
Deposition of Juan F. Mena, June 17, 2015
Deposition of Victoriano Molina, August 11, 2014
Deposition of Jason Moll, July 15, 2014
Deposition of Abel Barajas Montes, August 19, 2014
Deposition of Pedro Navarro, August 11, 2014
Deposition of Lazaro Padilla, August 18, 2014
30 (b) (6) Deposition of Robert Power, March 24, 2015
Deposition of Robert Power, July 16, 2014
Personal Deposition of Robert Power, March 24, 2015
Deposition of Maria Iniguez Quintero, April 17, 2015
Deposition of Rafael A. Raymundo, August 18, 2014
Deposition of Cristina De La Rosa, April 16, 2015
Deposition of Theodore R. Roumbanis, August 20, 2014
Deposition of Juan J. Saravia, August 13, 2014
Deposition of Tafiti Shekur, August 20, 2014

Deposition of Gregory P. Smigelsky, March 17, 2015
Deposition of Mauricio A. Torres, June 24, 2015
Deposition of Edmundo Vega, June 10, 2015
Deposition of Daniel Villalpando, August 14, 2014
Deposition of Daniel Villalpando, September 17, 2013
Deposition of Wayne Vivolo, September 29, 2014
Deposition of Mazin Yako, August 14, 2014

Herman Johnson Declaration
Mazin Yako Declaration
Mazin Yako Exhibit 10

512_Meal_periods_requirements_order_permitting_meal_period_after_six_hours_o
EDV009742.xlsx
EDV086927.xlsx
EDV086927-EDV097214
EDV108910.xlsx
EDV108910-EDV109323
EDV109809.xlsx
EDV109809-111626
IWCArticle9

USEIA fuel price data.xlsx
http://www.bls.gov/oes/
www.tripadvisor.com/Travel-g28926-c186915/California:United-States:Ca.Toll.Roads.Bridges.And.Carpool.Info

Breshears Combined Dispatch Data
Breshears Depo Break Times Summary
Breshears Depo Meeting Times Summary
Breshears HM-iDirect Data
Breshears HM-iDirect Pivot
Breshears Settlement Model
Breshears Settlement Model - re $18.29

EXHIBIT H

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT, INC.; et al.,

Defendants.

Consolidated Cases: 3:12-cv-04137-JCS 4:13-cv-03091-JCS

AND ALL CONSOLIDATED CASES.

DEPOSITION OF EDMUNDO VEGA

Wednesday, June 10, 2015

Pasadena, California

Reported by: Alla Ponto
CSR No. 11046
NDS Job No.: 172675

Q. Are there other things that you shop around for lower prices?

A. No.

Q. On days that you drive, are you able to tell me how many hours a day you work for E & J Trucking?

A. Yes.

Q. Okay.

A. Like, it depends. It's 8 to 14 hours.

Q. So it could vary as much as six hours on any given day?

A. Yes, uh-huh.

Q. Yes?

A. Yes.

Q. How do you handle meals on the days that you are working, driving a truck for E & J Trucking?

A. What do you mean how do we handle meals?

Q. How do you handle meals? Do you bring food with you? Do you go to a restaurant?

A. Well, when we do -- when we finish loading, we stop by and get breakfast.

Q. In the morning, after you finish loading up the truck, you stop, and you and your helper get breakfast?

A. Yes.

Q. And is that pretty much every day that you

drive?
A. Yeah, every day.
Q. Is there a particular place you stop for breakfast?
A. No. Different places.
Q. Approximately how long do you stop for breakfast?
A. 15, 20 minutes.
Q. Ever longer than that?
A. No.
Q. Why not?
A. Because we have time windows on our route that we need to be at certain specific time at the stop.
Q. The times that you are referring to on the route, are you talking about windows of time or particular individual time?
MR. KONECKY: Asked and answered.
THE WITNESS: We have a two-hour window on each job. For example, Stop No. 1, it's 7:30 to 8:30. I mean, 7:30 to 9:30. So it's a two-hour window. So we've got to be there before 9:30.
BY MS. CASH:
Q. As long as you're there before 9:30, then it's considered a timely delivery?
A. Yes. You are in the window.

EXHIBIT I

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT, INC.; et al.,

Defendants.

AND ALL CONSOLIDATED CASES.

Consolidated Cases:
3:12-cv-04137-JCS
4:13-cv-03091-JCS

DEPOSITION OF MAURICIO A. TORRES

San Francisco, California

Wednesday, June 24, 2015

Reported by: Kathy Kollehner
CSR No. 4102
NDS Job No.: 173129

operate the M&R Trucking truck, correct?
A. Correct.
Q. And M&R Trucking pays these drivers?
A. Yes.
Q. What does M&R Trucking pay the drivers?
A. It's an average because the one who drives the smallest truck earns 135. And the one who works on the big truck earns 145. This is just for the drivers now.
Q. And how did M&R Trucking decide to pay the driver of the smaller truck less than the driver of the big truck?
A. One, because it's less work, and it pays less. And the second because he works fewer hours.
Q. Why is it less work to operate the smaller truck?
A. Because it's fewer stops, fewer cities.
Q. What kind of product is M&R Trucking delivering with the smaller truck?
A. Furniture.
Q. Is the driver of the small truck delivering the same type of product as the driver of the big truck?
A. Yes.
Q. Are they both delivering to the same types of locations?

Q. Why do you park the trucks at the company's warehouse?

A. Well, that's because it's safer there. We have a locked gate there.

Q. When the drivers arrive at the warehouse in the morning, do you let them know which loading dock they need to back up to?

A. Yes. Generally, it's me.

Q. And how do you know which loading dock it is you're going to tell the driver to back up to?

A. Because when they tell me, I go and look for the manifest, and then I'll see what kind of truck will be needed.

Q. So MXD would provide the manifest to you, and then, in turn, you'll determine which driver gets which manifest?

A. Yes.

Q. How many days a week do you typically drive a truck for MXD?

A. Lately, I've been working five days a week.

Q. And is that more or less than what you experienced over the past four to five years with Excel?

A. No, I don't think so. It's the same, the same nearly. The only thing is, just when there's less work

EXHIBIT J

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

EXEL DIRECT, INC.; et al.,

Defendants.

AND ALL CONSOLIDATED CASES.

Consolidated Cases:
3:12-cv-04137-JCS
4:13-cv-03091-JCS

DEPOSITION OF JUAN F. MENA

Tracy, California

Wednesday, June 17, 2015

Reported by: Chris DeGeorge
CSR No. 7069
NDS Job No.: 172930

A. Yeah.
Q. Always drive one of the trucks?
A. Yes, one of the trucks.
Q. How many days a week do you typically work as a driver?
MR. KONECKY: Vague and ambiguous.
THE WITNESS: As of now?
BY MS. CASH:
Q. Yes, sir.
A. Six.
Q. Has that been the same schedule throughout the time that you've been with Exel/MXD, or has that changed?
A. Have changed. It used to be five in the big truck, but now, in the small truck, I work six 'cause I do less hours in that small truck.
Q. So let me see if I can understand. So since you've been operating the small truck, you have gone to driving six days --
A. Yes.
Q. -- correct?
And the reason that you've gone to driving six days is because your days are shorter --
A. Yes.
Q. -- correct?

THE WITNESS: I don't understand the question.
BY MS. CASH:
Q. When you got the money for the sale of the truck --
A. Uh-huh.
Q. -- you used that money for the business?
MR. KONECKY: Vague and ambiguous.
THE WITNESS: Yes.
BY MS. CASH:
Q. And then did you buy another small truck at that time?
A. Yes, ma'am.
Q. Was that your first small truck or your second one?
A. My first one.
Q. And then since 2010, you acquired the second small truck?
A. Yes.
Q. So I think I understood you to say earlier that you were driving five days a week when you drove the bigger truck, correct?
A. Yes.
Q. Approximately how long were your days when you drove the big truck?
A. Approximately how long they were?

Q. Yes, sir.
A. Ten and 12 hours.
Q. And do you recall what the pay was when you were making deliveries on the big truck?
A. I don't remember.
Q. Was it a per-delivery fee?
A. Per delivery.
Q. Other than being paid per delivery on the big truck and a flat rate on the small truck, have you been paid any other way for your work for Exel or MXD?
A. No.
Q. Do you own any other business besides Mena Trucking?
A. No.
Q. You said you're working approximately 60 days a week presently. Is your other truck working approximately six days a week presently?
A. Yes.
Q. Do both of your trucks typically operate on the work days for Exel or MXD?
A. Yes.
Q. Are there times where there is not enough business for both of your trucks to be operating?
A. In slow season.
Q. In slow season?

EXHIBIT K

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
vs.	) Case No. 3:12-cv-04137-JCS
EXEL DIRECT, INC.; et al.,	)
Defendants.	)
AND ALL CONSOLIDATED CASES.	)

DEPOSITION OF BYRON CIFUENTES

San Diego, California

Wednesday, June 3, 2015

Reported by: Stefanie A. Landa
CSR No. 7332
NDS Job No.: 172412

Q. I'm asking about a broad time frame here, but do you have an estimate as to how many --
A. Are you talking about me personally?
Q. Yes, you personally, how many.
A. I would say, an average, five.
Q. So over the past five years, it's been an average of five days a week that you've driven a truck?
MR. KONECKY: Overbroad.
THE WITNESS: Yes.
BY MR. BUTCHER:
Q. And how many hours a day are you typically working on those five days a week?
MR. KONECKY: Vague and ambiguous.
THE WITNESS: 10, 12, 13 hours.
BY MR. BUTCHER:
Q. Is there a reason why some days it would be 10, some days it might be 13?
A. Depends on the route.
Q. What kind of route would give you a 10-hour day?
A. A short distance, meaning the mileage of the route, and the stop count, and it has to do a lot with what we're delivering.
Q. You mentioned -- I think you said if it's a short delivery, it would be --

EXHIBIT L

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
- - -

Daniel Villalpando, individually and on behalf of all others similarly situated, :

Plaintiffs, :

vs. : Case No. 3:12-cv-04137-JCS

Exel Direct, Inc., et al., :

Defendants. :

Tafiti Shekur, individually and on behalf of all others similarly situated, :

Plaintiffs, :

vs. : Case No. 4:13-cv-03091-JCS

Exel Direct, Inc., et al., :

Defendants. :

- - -

DEPOSITION OF GREGORY P. SMIGELSKY

- - -

Tuesday, March 17, 2015
9:58 a.m.
3242 West Henderson Road, Suite A
Columbus, Ohio 43220

- - -

SHAYNA M. GRIFFIN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED REALTIME REPORTER

- - -

Job No; 90093

(Whereupon, a portion of the record was read by the reporter.)

MR. BUTCHER: Thank you.

You can answer.

A. Yes.

Q. All right. Under page 4, No. 19, under Terms of Working Conditions, a typical work schedule is five to six, sometimes seven days per week, and usually 10 to 12 hours a day, including loading. Schedule is account specific. Exel Direct's goal is to keep delivery specialists' trucks operating at full capacity.

Are those true and correct statements?

A. Yes. In fact, I think we talked about that already.

Q. The next thing says, "The number of days off varies. Delivery specialists can take a day off as long as their truck is running with a DOT qualified Exel Direct certified driver as a substitute."

Is that also a correct statement?

A. Yeah. I think there's more leeway now in the -- to take your day off. They work -- that's another site specific. You'll have to ask how the sites deal with drivers needing days off. A lot of

EXHIBIT M

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

- - -

Daniel Villalpando, individually and on behalf of all others similarly situated, :
Plaintiffs, :
vs. : Case No. 3:12-cv-04137-JCS
Exel Direct, Inc., et al., :
Defendants. :

Tafiti Shekur, individually and on behalf of all others similarly situated, :
Plaintiffs, :
vs. : Case No. 4:13-cv-03091-JCS
Exel Direct, Inc., et al., :
Defendants. :

- - -

DEPOSITION OF RENEE ALBARANO

- - -

Tuesday, May 12, 2015
10:02 a.m.
Regus Business Center
4449 Easton Way, Suite 200
Columbus, Ohio 43219

- - -

SHAYNA M. GRIFFIN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED REALTIME REPORTER

- - -

Job No. 92817

A. Standard regular maintenance.
Q. Not repairs?
A. That would not include repairing a truck after an accident.
Q. And do you know where you got that figure, 10 cents?
A. That was Exel's cost on the leased trucks.
Q. 10 cents a mile?
A. Yes.
Q. Actual costs?
A. Yes.
Q. And then --
MR. HANSON: I'm sorry. Can you read that question and answer.
(Whereupon, a portion of the record was read by the reporter.)
BY MR. KONECKY:
Q. Then it says $3 price per gallon?
A. Yes.
Q. Was that the approximate price per gallon at the time?
A. Yes.
Q. Then you have 200 miles per day. What is that?
A. That was an estimate of number of miles a

truck would drive in a day.
Q. And where did you get that estimate?
A. Conversations with site leaders, recruiters, management.
Q. Over the course of -- over what period of time did you have these conversations with site leaders, recruiters and management to come up with these estimates?
A. The several month period that I referred to earlier as creating this model.
Q. Were they conversations that you had in person? Did they include conversations in person?
A. Yes.
Q. Did they include conversations over the phone?
A. Yes.
Q. Did they include conversations by email?
A. No.
Q. So the 200 miles per day was an estimate based on conversations you had with site managers, senior management and recruiters; correct?
MR. HANSON: Asked and answered. Objection.
A. Yes.
Q. And that is an average across the United

States?

MR. HANSON: Objection. That misstates her testimony. She never said anything about averages.

MR. KONECKY: That's why I'm asking a question.

BY MR. KONECKY:

Q. Is that an average across the United States or something else?

A. That was the input that was provided to me from the various parties that were asked the question.

Q. And you -- did you ask the various parties were they local to one particular region or were they across the United States?

A. It was a variety of locations.

Q. Across --

A. The United States.

Q. -- what areas? Across the United States.

And based upon that input from local managers and recruiters and senior management at various areas across the United States, you came up with approximately 200 miles per day per truck; correct?

A. Correct.

Q. Okay. The next says 11 miles per gallon. What is that?
A. That is an estimate of the truck efficiency for fuel.
Q. And where did you get that estimate?
A. The same conversations with site managers, recruiters, senior management.
Q. Then the next one is 260 working days. What does that mean?
A. That is the number of days per year that a driver would be making deliveries.
Q. So that's -- am I correct that's approximately five days a week?
A. Yes.
Q. And based upon the input from the local managers and recruiters and senior managers, am I correct that you determined that either on average or typically the drivers would work about five days a week?
MR. HANSON: I object to the form of the question. It's a compound question. It's vague and ambiguous.
A. I assumed the drivers would work on average five days per week.
Q. Okay. And you assumed that based on your

conversations with local management; right?
A. Yes.
Q. And your conversations with recruiters?
A. Yes.
Q. And your conversations with senior management?
A. Yes.
Q. Over a several month period?
A. Yes.
Q. All right. No. 4 says temp driver costs. Can you describe what this is.
A. This is information from the P & L for a six-month basis, January through June, $548,376 paid to temp companies for driver costs.
Q. I'm sorry?
A. And an estimate of the next six months of $422,155 for a total of just over $1 million in annual temp driver costs.
Q. So January through June were actuals. Were they the actuals drawn from the P & L's?
A. Yes.
Q. Did you draw it from the nationwide P & L or something else?
A. These are from all network sites across the US.

EXHIBIT N

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all other similarly situated,

Plaintiffs,

vs. CONSOLIDATED CASES: 3:12-cv-4137-JCS 4:13-cv-03091-JCS

EXEL DIRECT INC., et al.,

Defendants.
______________________________/

TAFITI SHEKUR, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

EXEL DIRECT INC., et al.,

Defendants.
______________________________/

DEPOSITION OF CRISTINA DE LA ROSA
SAN FRANCISCO, CALIFORNIA
THURSDAY, APRIL 16, 2015

BY: ANDREA M. IGNACIO, CSR, RPR, CRR, CCRR, CLR
CSR LICENSE NO. 9830
JOB NO. 91421

A Maybe. It's not, like, a standard. If they ask me, "Well, can I work six days?" Then I'll say, Well, if you're in between DOT hours, I guess you can. That would be a -- you know, ask the GM.

Q All right.

Do you recall ever having that conversation, a conversation to that effect?

A I could have said -- you know, that's why you ask the GM. You know, if they ask me, "Do you think I can work six days," ask the GM. I have -- anything more than that...

Q When you hire or look for contractors, do you ever look for contractors who would work on a part-time basis?

A No.

Q You're only looking for people who have full-time capacity?

A Yes.

Q In No. 2 at the last -- here on page 23, the last sentence says:

"Exel's direct goal is to keep DS's trucks operating at full capacity."

Do you see where I am?

A Yes.

Q Is that your understanding of the goal?

EXHIBIT O

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs. Case No. 3:12-cv-04137-JCS
4:13-cv-03091-JCS

EXEL DIRECT, INC., et al.,

Defendants.

------------------------------/

VIDEOTAPED DEPOSITION OF DAVID BRESHEARS, CPA/CFF
Emeryville, California
Wednesday, January 27, 2016

Reported by:
LORRIE L. MARCHANT, CSR No. 10523
RMR, CRR, CCRR, CLR

JOB NO. 102409

with the U.S. Government in terms of the amount of taxes, or the amount of unreimbursed expenses, I would expect that that individual had some support for those documents. If I was asked, I could look at that, but I have not performed that analysis.

BY MR. KADUE:

Q. I understand. But if you were trying for a particular individual, John Smith, to find actual hours worked, actual mileage driven, actual expenses incurred, you would be looking at every scrap of paper you could find or every electronic data point you could find for that individual; right?

A. Did the employer require them to keep them? Or excuse me, did -- did -- I don't know if Exel Direct required individuals to keep copies of receipts for reimbursement.

Q. Yeah, but that's not what I'm asking.

I'm asking in terms of your role as a forensic accountant, if you were being asked to determine the actual hours worked, mileage driven, expenses incurred for a particular individual, then you would go and look for every scrap of paper, every electronic data point you could find on that particular individual, wouldn't you?

MR. KONECKY: Incomplete hypothetical.

Vague and ambiguous.

THE WITNESS: Again, this -- this goes back to what would be needed to perform a reasonable calculation. I would never retain another client if I said I needed to look at four and a half million records to determine John Smith's actual hours.

BY MR. KADUE:

Q. Well, help me understand. Why would you need to look at four and a half million records if you're just interested in the experience of one individual, John Smith?

A. Because I don't know where John Smith's records would be within four and a half million records when they're -- essentially in bankers' boxes that have no organization -- that may or may not have some organization that would allow me to find every document that may or may not help me.

Q. Do you have any personal knowledge with respect to the -- the condition or the organization of the four and a half million documents?

A. Only what I have been told by counsel.

Q. So, again, focusing on John Smith, among the things you would want to do if you had the job as a forensic accountant to determine expenses incurred, you would want to see all of John Smith's

A. Correct.
Q. And -- but isn't it also true, in the same document that talks about that, it also says that the contractor can always take a day off so long has the contractor provides a DOT-certified Exel certified driver?
A. I think that's just kind of the general gist of what I recall.
Q. So why, then, would you assume that it's the contractor himself or herself who's driving five days a week as opposed to, for example, driving four days a week and having a second driver two of days a week?
A. Well, again, if -- if the data is available for any individual, I would take that into account. It's only -- this only occurs for individuals where the data has not been produced, so I had to make some sort of assumption.
I could have assumed one day, but I would think that would be an injustice to the plaintiffs because it's just picking a number. I've stated it clearly, that it's not my -- it's an assumption of five days per week. It's based on certain things that I've been told and information that even the defendants would appear to support or the statements

by people working for the defendant would corroborate.

If additional information is provided for these individuals, I'll happily incorporate that into my analysis, and there will be no need to make an assumption in terms of the actual -- or in terms of how many days per week these people may have been working.

Q. Well, you did have data available to you revealing that many of the drivers working were not contractors but, rather, were nonclass members; right?

A. Well, there's information that shows that people drove for contractors. I noted that sometimes a contractor would drive for another contractor, which produces a different dimension.

Q. Like on, for example, look at -- please look at Breshears No. 5. Look at Enrique Carrillo. He's No. 3591.

Do you see that?

A. Yes.

Q. And that's a four-digit number; right?

A. Correct.

Q. Are you aware, looking at -- looking now at Breshears Exhibit 3, are you aware that all the this point I'm not saying you should have, but I'm just asking you, at this point you haven't looked at the iDirect data to either confirm or refute his assertion that a roughly 39 percent of the observations in the iDirect data involved a subcontractor or employee driving for a class member; correct?

A. Well, I looked at the data, but I would have to know what type of assumptions he used because there was a number -- a large number of entries where the column that is supposed to be the actual driver is blank.

So does that mean nobody was driving those deliveries, or does it mean it defers -- defaults back to the contractor? I don't know. I would have to have information from the person most knowledgeable, perhaps maybe Mr. Walker has spoken with that person. I would have to see his support for this conclusion.

Q. Switching subject matter to driver logs, we've mentioned once or twice that 2,572 driver logs that were gathered.

Do you have any idea how many driver logs remain nestled in all those banker boxes?

A. I do not know, but I -- if somebody would like to hire us to go through the 4.5 million records, I would be more happy to do that. Or if somebody went through that exercise, I would be more than happy to incorporate all of those records into my analysis.

I am not opposed to reviewing more data. It's just that the -- we all have to work within cost constraints, and we limited our analysis to what I would consider those easily ascertainable through a cost-effective review process.

Q. Did you give any advice to Mr. Konecky or his colleagues as to how to gather the driver logs?

A. I think I may have asked him what -- how the documents were organized. And I was informed that there was no dedicated file folder or banker's box that dealt specifically with driver daily logs. There were some banker's boxes that contained large blocks or chunks -- I don't know what the proper term to describe it would be -- but of driver's daily logs, but that there were, nestled within a typical driver's packet for a week or a month, I don't know how they were organized, every X page maybe a manifest, and there may be driver daily logs behind that.

But my understanding was that they were

THE WITNESS: I understand your hypothetical. What is your question?

BY MR. KADUE:

Q. So Mr. Curtis's model would assume that the person would have expenses in the year in which the driver worked with Exel when, in actuality, the driver did not have expenses of on that kind in that year; correct?

MR. KONECKY: Vague and ambiguous. Misstates the testimony.

THE WITNESS: I think what's typical with any IRS mileage -- or any mileage-based figure, it's understood that the cost of -- to replace a tire is not as a result of that one moment when the nail punctures the tire. It's the result of driving 100,000 miles on those tires that caused them to at some point go bad.

It's -- the way it's modeled, it's that over time, a typical person driving a typical vehicle, would expend X amount of dollars towards repairs, whether it be general oil and maintenance that they should be doing each and every year or whether it's more major repairs that happen more infrequently but would typically be spread over the life of your vehicle.

and other information having to do with a driver named Walter Gomez.

(Marked for identification purposes, Exhibit 9.)

BY MR. KADUE:

Q. And you'll see there, for example, Mr. Gomez reports 5.25 hours worked on December 26.

Do you see that?

A. Yes.

Q. And then a few pages down, on December 28, he's recording 6.5 hours, total hours, on December 28.

A. The third page?

Q. No. I believe it's the fourth page down.

A. Okay.

Q. So my question for you is -- and if I've asked this before, I apologize. I just don't remember.

Did you -- did you look at the driver's daily logs to see if they would yield any average number with respect to hours worked? I understand your testimony has been that you looked at dispatch data. And my question now is whether you -- whether you did or did not look at the driver's daily log as a source for making any estimates for hours worked.

A. We used it as a source of hours worked in the sense that we had to be able to measure whether the six-hour workday criteria was met --

Q. Understood.

A. -- or the ten-hour workday criteria as met.

Q. Understood.

A. But we did not fold this analysis into the larger hours worked by contractor analysis because I don't see -- other than potentially a name that may or may not be legible, the vehicle number won't allow me to identify who that person is and how to tie them back to their averages in my analysis.

Q. But sometimes the name is legible; right? As in the case of Mr. Walter Gomez.

A. I think as long as there's only one Walter Gomez, I would be able to interpret that that's what -- you laugh, but when you have a case of 26,000 migrant farmworkers, even a clear name doesn't mean you can match them up with the proper person.

So it would be a chore to go through all of the driver daily logs, try and match them to a particular person, without having the employee -- excuse me, without having the driver ID number.

Q. And your understanding is that the daily

EXHIBIT P

IRS

News Essentials

- What's Hot
- News Releases
- IRS - The Basics
- IRS Guidance
- Media Contacts
- Facts & Figures
- Around the Nation
- e-News Subscriptions

The Newsroom Topics

- Multimedia Center
- Noticias en Español
- Radio PSAs
- Tax Scams
- The Tax Gap
- Fact Sheets
- IRS Tax Tips
- Armed Forces
- **Latest News Home**

2016 Standard Mileage Rates for Business, Medical and Moving Announced

IR-2015-137, Dec.17, 2015

WASHINGTON — The Internal Revenue Service today issued the 2016 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2016, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 54 cents per mile for business miles driven, down from 57.5 cents for 2015
- 19 cents per mile driven for medical or moving purposes, down from 23 cents for 2015
- 14 cents per mile driven in service of charitable organizations

The business mileage rate decreased 3.5 cents per mile and the medical, and moving expense rates decrease 4 cents per mile from the 2015 rates. The charitable rate is based on statute.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.

These and other requirements for a taxpayer to use a standard mileage rate to calculate the amount of a deductible business, moving, medical or charitable expense are in Rev. Proc. 2010-51. Notice 2016-01 contains the standard mileage rates, the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that a taxpayer may use in computing the allowance under a fixed and variable rate plan.

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Page Last Reviewed or Updated: 17-Dec-2015

EXHIBIT Q

INDEPENDENT TRUCKMAN'S AGREEMENT

This Agreement is made this _____ day of ____________, 20____ in the County of _____________, State of __________________________, between Exel Direct Inc. (Exel Direct), a California corporation ("COMPANY") and ____ (name) __________________________________ (D/B/A) collectively referred to as ("CONTRACTOR"), as follows:

1. **CONTRACTOR'S General Duties**. When requested by COMPANY, CONTRACTOR in a good and workmanlike manner will deliver consumer items for COMPANY'S customers and perform such other transportation and related services as may be necessary to serve COMPANY'S customers.

2. **Duration**. This Agreement shall become effective on the date inserted in the first sentence of this Agreement and shall remain in effect for a period of one (1) year. Thereafter, it shall be effective from year-to-year unless sooner terminated in accordance with Paragraph 3.

3. **Termination**. This Agreement may be terminated at any time: (a) by mutual consent; (b) by the insolvency of CONTRACTOR pursuant to Paragraph 12 of this Agreement; (c) without cause upon either party giving the other sixty (60) days written notice of termination; or (d) with cause upon the breach of this Agreement by either of the parties. Upon any termination without cause under Subsection (c), CONTRACTOR, at COMPANY'S option, may be transferred to another location then being served by the COMPANY. Failure of CONTRACTOR to comply with the transfer, shall constitute a breach of this Agreement. Upon any termination for cause under Subsection (d), CONTRACTOR shall not be entitled to the sixty (60) days notice provided under Subsection (c).

4. **Payment**. CONTRACTOR shall receive payment for services in accordance with the schedule attached as Exhibit A.

5. **Expenses**. CONTRACTOR shall provide its own vehicle and shall pay all costs attendant to its operation and maintenance. In the event of any conflict between the terms of this Agreement and any vehicle lease between COMPANY and CONTRACTOR, the terms of this Agreement shall govern.

6. **Insurance**. CONTRACTOR will carry at its own expense public liability and property damage insurance upon any vehicles or other equipment used by it in carrying out its duties under this Agreement. The insurance shall be in an amount consistent with minimum COMPANY requirements.

7. **Labor and Hold Harmless**. CONTRACTOR shall, at its own expense: (a) furnish whatever labor is necessary to provide delivery services to COMPANY'S customers; and (b) provide Worker's Compensation and Employer's Liability Insurance. CONTRACTOR shall also be responsible for the payment of wages and social security and withholding taxes for any of its employees. CONTRACTOR shall hold COMPANY harmless from any liability resulting from injury or death of persons driving, operating, repairing, maintaining, loading or unloading CONTRACTOR'S equipment.

8. **Loss or Damage**. CONTRACTOR will be liable for loss or damage to items intended for transport which are in CONTRACTOR'S possession or under its dominion and control.

9. **Control and Exclusive Use**. In performing services under this Agreement, CONTRACTOR will direct the operation of any equipment in all respects and will determine the means of performance including but not limited to such matters as choice of any routes, points of service of equipment, rest stops, and timing and scheduling of customer deliveries. The parties intend to create an independent contractor relationship and not an employer-employee relationship.

10. **Bond**. CONTRACTOR agrees to post a Cash Performance Bond with COMPANY prior to commencing operations under this Agreement. COMPANY will hold the Cash Performance Bond during the period this Agreement remains in effect and for forty-five (45) days thereafter. COMPANY shall pay interest on such Bond at an amount to be periodically determined.

11. **Laws**. CONTRACTOR agrees to comply with all federal, state and local laws, rules and regulations pertaining to its performance under this Agreement.

12. **Insolvency**. Any action, voluntarily or involuntarily, against CONTRACTOR under any bankruptcy or insolvency proceedings or any assignment for benefit of creditors by CONTRACTOR, shall constitute a breach of this Agreement.

13. **Invalidity**. In the event any provision of this Agreement shall be held to be invalid, it shall not affect the validity of the remainder of this Agreement.

14. **Notice**. Any written notice required by the terms of this Agreement shall be given either by personal delivery or by mail.

15. **Confidential Information and Non-Solicitation**.

A. Confidential Information - During the term of this Agreement, CONTRACTOR will have access to confidential information which is regularly used in the operation of COMPANY'S business. CONTRACTOR shall not disclose such confidential information to any third parties or use it in any way, either during the term of this Agreement or at any time thereafter except as required in the course of CONTRACTOR'S performance under this Agreement.

B. Solicitation After Termination of Contract - CONTRACTOR shall not for a period of one (1) year immediately following the termination of this Agreement, either directly or indirectly:

(1) Use for itself or make known to any other person, firm or corporation the names or addresses of any of COMPANY'S customers, contractors, employees or any other information pertaining to them; or

(2) Call on or attempt to call on, solicit, take away or hire any of COMPANY'S customers, contractors or employees, either for itself or for any other person, firm or corporation.

C. Injunctive Relief. In the event CONTRACTOR attempts to violate any provision of this Paragraph 15, CONTRACTOR agrees that COMPANY in addition to any other rights or remedies it may have, shall be entitled to injunctive or other equitable relief.

16. **Arbitration**. Except as set forth below, CONTRACTOR agrees to submit to final and binding arbitration any and all claims and causes of action which CONTRACTOR may have against the COMPANY and its affiliates and subsidiaries or officers, directors, employees, agents and representatives thereof, including claims and causes of action which arose prior to the execution of this Agreement. Similarly, COMPANY and its subsidiaries agree to submit to final and binding arbitration any and all claims and causes of action which they may have against CONTRACTOR, including claims and causes of action which arose prior to the execution of this Agreement. This arbitration provision includes all tort claims and all claims based on an alleged violation of statute or public policy. In order to be timely, a CONTRACTOR'S request for arbitration must be submitted to Exel Direct Inc., 570 Polaris Parkway, Westerville, Ohio 43082, Attention: Legal Department, in writing, within the applicable statute of limitation provided by law. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). If the parties are unable to agree upon an arbitrator, either party may request a panel of arbitrators from the AAA with experience in the transportation industry. The arbitrator may award any relief which could be awarded by a court of law based on the same claims, and the arbitrator shall assess fees and costs in accordance with applicable law. The legal basis for this arbitration provision is the state laws governing arbitration in the state in which CONTRACTOR performs services under this Agreement. If CONTRACTOR performs services in more than one state, the laws in the state in which CONTRACTOR makes the most deliveries shall govern. It is agreed that no class or consolidated class actions will be available under the arbitration procedures. NOTE: This arbitration provision constitutes a waiver of CONTRACTOR'S right to a jury trial.

17. **Complete Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior agreement between the parties concerning the subject matter of this Agreement.

18. **Governing Law.** This Agreement and any dispute thereunder shall be governed by the laws of the State of Ohio.

EXEL DIRECT INC.

By: ______________________________

____
(print name)

CONTRACTOR:

By: ______________________________
(signature)

____
(print name)

____
(d/b/a)

____
(FEIN)

ACCEPTANCE BY CORPORATE OFFICE

This Agreement shall not be binding upon COMPANY until signed by an authorized individual at the COMPANY'S office in Westerville, Ohio.

By:

______________________________/______________________________
(print name) (signature)

EXHIBIT A

COMPENSATION SCHEDULE

1. CONTRACTOR will receive a minimum of sixty percent (60%) of hauling revenue. The term "hauling revenue" shall be interpreted in accordance with the COMPANY'S established accounting practices and past practices. Hauling revenue is not the same as total revenue from account activity. Hauling revenue does not include compensation for services above and beyond basic delivery services. For example, compensation for routing and supervision, overhead, customer relations, order fulfillment, pre-notification, cross-dock operations, transportation management, intercompany transfer and warehouse operations, among other things, are not considered elements of hauling revenue. In addition, CONTRACTOR's compensation may include additional payments for authorized accessorial services, such as enhanced installation. The COMPANY reserves the right to update its accounting practices to reflect changes in client operations and requirements. Any payments to CONTRACTOR above sixty percent (60%) of hauling revenue shall be considered as a temporary adjustment only, and may thereafter be reduced to not less than sixty percent (60%) at the sole discretion of the COMPANY.

2. For account activity not subject to the compensation terms set forth in Section 1 above, including network solution customer deliveries, CONTRACTOR will receive a daily delivery rate of $_______ plus a delivery stop charge of $________. CONTRACTOR compensation, under this Section 2, may include additional payments for authorized and agreed assessorial services. Upon request, COMPANY shall provide CONTRACTOR with a listing of the account activity subject to the compensation payable under this Section 2.

CONTRACTOR:	**EXEL DIRECT INC.**
By: ______________________________	By: ______________________________
(Signature)	(Signature)
______________________________	______________________________
(Print Name)	(Print Name)
______________________________	______________________________
(D/B/A)	(D/B/A)

EXHIBIT R

Contains Confidential Portions
Bound Separately

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, et al.,)
)
)
Plaintiff,)
) Case No.
vs.) 3:12-cv-04137-JCS
) 4:13-cv-03091-JCS
EXEL DIRECT INC., et al.,)
)
)
Defendants.)
)
_______________________________)

CONTIANS CONFIDENTIAL PORTIONS
BOUND SEPARATELY

DEPOSITION OF KENNETH MANGEN
PASADENA, CALIFORNIA
TUESDAY, JUNE 2, 2015

REPORTED BY: CHERYL ASADA, CSR 13496
JOB NO. 94036

Q And each truck, typically, has one helper?
A Yes.
Q So on the modeling, when you -- when you look at an item such as mileage on a particular model, is it mileage -- is it presented as mileage for the total mileage for the business or mileage per day or mileage per driver or something else?
A Mileage per route.
Q Mileage per route.
And one driver per route?
A Typically.
Q So -- and when you say "mileage per route," it's mileage for the route for a particular day?
A Yes.
Q So, in California, do you have -- is there a range in terms of the mileage per route per day that you've observed as you've been doing this modeling over the years?
A It would be an estimate.
Q What would it be?
A Between 90 and 250.
Q Is there any kind of bell curve or anything where you would see where most of the routes typically congregate over somewhere in between 90 and 250?
A I think the majority would probably fall into

Contains Confidential Portions
Bound Separately

125 to 200.
Q Do you retain your models over the years --
A I don't.
Q -- after you do them?
Does anybody?
A I don't know.
Q Are they -- when you're developing your models, are you doing them electronically, are you doing them on paper, or a combination?
A Today, we do them electronically.
Q How long have you been doing them electronically?
A I don't know.
Q More than five years?
A I don't know.
Q More than three years?
A I would say we've been doing them, at least, three.
Q But possibly longer?
A Yeah. But I don't know how long it's been. It hasn't been that long.
Q Do you recall if you were doing the modeling electronically while the company was still at Exel Direct?
A I believe it was developed in -- at Exel

EXHIBIT S

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL VILLALPANDO, individually and on behalf of all others similarly situated, Plaintiffs, vs. EXEL DIRECT, INC.; et al., Defendants.	Case No. 3:12-cv-04137-JCS Volume I
AND ALL CONSOLIDATED CASES.	

DEPOSITION OF VLADIMIR MARINOV

Sacramento, California

Wednesday, August 20, 2014

Reported by: Barbara A. Como
CSR No. 5794
NDS Job No.: 164704

Q. And how many drivers did you hire to perform services at any time while performing under the contract?

MS. POPPLER: Objection. Calls for a legal conclusion.

THE WITNESS: It was just one.

BY MR. WRIGHT:

Q. What was his or her name?

A. His name was Michael Kirkendal.

Q. Could you spell the last name for us, please?

A. K-i-r-k-e-n-d-a-l.

Q. When did you hire Mr. Kirkendal?

A. It was early 2013.

Q. Where did you find him?

A. He was a helper seeking better pay, wanted to become a driver.

Q. And you paid Mr. Kirkendal. Is that correct?

A. That is correct, yes.

Q. How much did you pay him?

A. Paid him $120 as a driver.

Q. Is that $120 per day?

A. Correct.

Q. How did you decide what amount to pay Mr. Kirkendal?

A. Based on what we were getting paid from the contract it was the amount that was appropriate to pay the driver.

Q. How do you decide that $120 was appropriate?

A. Based on the expenses that we were -- that we had and from other experience other drivers -- other drivers, contractors, they paid their drivers that much. And it seemed that it made sense to pay him the same as well.

Q. Did you think that the $120 a day you paid him was a fair wage for his services?

MS. POPPLER: Objection. Calls for opinion testimony. Speculation and a legal conclusion.

THE WITNESS: I'm not sure if it was enough for him, but that's what I could pay at the time.

BY MR. WRIGHT:

Q. Did you provide Mr. Kirkendal with a 1099?

A. Yes.

Q. And I believe you testified earlier that you deducted the amount that you paid Mr. Kirkendal as a business expense from your taxes?

A. Correct, yes.

Q. Did you hire Mr. Kirkendal to drive so that you didn't have to drive the vehicle?

A. At the time I got another job, therefore, I wasn't able to work for Exel. So I had to hire another driver to drive the truck.

Q. What was that other job that you got?

EXHIBIT T

REALISTIC PREVIEW OF BUSINESS OPPORTUNITY

In Terms of Selection

As we discussed during the phone interview, the following criteria must be met to be considered:

- 21 years of age
- US citizen, or in possession of a work authorization card or resident card
- Respectable employment history
- Clean criminal history
- Clean MVR
- Acceptable credit report
- Experience driving a commercial vehicle
- Ability to pass DOT physical and drug test
- Ability to purchase a truck
- Ability to provide contract services any of the seven days
- Preferably industry experience
- Preferable prior business ownership
- Hogan Personality Score based on:
  - Customer service focus
  - Communication and interpersonal skills
  - Tolerance for stress
  - Overall business sense

In Terms of Safety

Exel Direct's **FOCUS** is on safety. Our mantra is **"Safety is no Accident".** With that said, not only are we requesting MVR's on each perspective candidate, we will also be obtaining a commercial driver's history using **CSA 2010.**

CSA 2010 is the method used by the **DOT** to track and score compliance with rules, regulations and driver behaviors, as noted on a scale or roadside **DOT** inspection.

CSA 2010 is designed to note and address patterns of violations that lead to crashes. All violations now have severity scores as related to the likelihood of causing a crash. For example, a flat or defective tire (8points) is more likely to cause a crash than a hood not being properly secured (2 points). **CSA 2010** also weighs the violation based on time. A violation that is current, less than 6 months old, carries higher points (3 points) than a violation in the past. This makes it **VERY IMPORTANT** to avoid the violation in the first place by not taking chances and making sure you or your driver and vehicle are able to pass an inspection with **NO** VIOLATIONS at **ANY** time. DOT will now track and score drivers for these violations. Your ability to maintain good standing with the **DOT** is in your control and it is critical to **NOT** operate on the public highways when either you or your vehicle is not in compliance. **Exel Direct will be checking driver's history records prior to entering into a contract agreement with perspective contractors.**

Key Points:

- **CSA 2010** monitors the success of your compliance efforts regarding your business. As an owner of a transportation operation, you are responsible for assuring you and your truck are safe and ready to operate on the public highways
- A detailed **PRE-TRIP INSPECTION** is a **MUST** to assure this success. If a light is out, or if you have a tire that is damaged or worn, it will draw the attention of enforcement officers. This will create a delay in your route, or even the loss of revenue. This pre-trip inspection must also include you or your driver's credentials, such as Medical Card and current valid license.
- **PREVENTATIVE MAINTENANCE** is the key to monitoring this part of your business. Regular trips to a reputable truck maintenance shop **AND SETTING MONEY ASIDE** in your budget for these regular inspections and repairs will pay dividends, guaranteeing good **CSA 2010 SCORES.**
- **CSA 2010** records violations noted on roadside inspections for both you and the motor carrier you are leased to, Exel Direct. Your future success will be affected by the number and types of violations placed in your record as a result of a roadside inspection. **NO VIOLATION** inspections are the key to success and must be a key **FOCUS** of your business plan.

In Terms of Income

1. Delivery Specialists receive settlement checks, not paychecks from Exel Direct, which means they are responsible for all taxes, labor costs, truck payment and maintenance costs, insurance costs, accounting fees, etc.

2. The average annual gross income at the client account is **$125,000.00.**

3. The average annual net income at the client account is variable, based on a candidate's individual circumstances, such as truck payment, lease, or rental, insurance rates, etc. **A good guideline to follow is 60% expenses, 40% profit. Recruiter will provide a personalized operating expense report.**

4. Delivery Specialists may be able to increase their income potential: by becoming a Master / Star Force contractor, by referring delivery specialists, by getting assistants DOT certified and operating additional trucks; or by increasing productivity.

In Terms of Start – Up Costs

5. The typical truck down payment / deposit is **$5,000.00.** This is determined based on your credit rating.

6. The initial operating expense such as costs for your DOT physical and drug screen, hand tools, equipment, maps, uniforms, cellular phone, accounting fees, and documentation fee is **approximately $2,000.00. Recruiter will itemize each expense.**

7. We require a security deposit of **$2,500.00.** This money is held in an interest bearing escrow account for the length of our contract. Upon termination or our contract, this money is used as resource, if you have any outstanding debts, such as claims. If not, the money is refunded within 45 days of contract termination.

8. The operating money needed for the first two (2) weeks until you receive your first settlement is **$1,500.00 (suggested).** This would cover fuel and paying your assistant.

In Terms of Operating Expenses

9. The monthly truck costs range from **$700.00-$1,200.00.**

10. The average fuel cost is **$1,500.00** per month. This will vary with each account. **Recruiter will provide the average miles for the specific account.**

11. The typical maintenance cost for a truck based on $.10 per mile is approximately **$4,000.00** per year. This is preventative maintenance, not major repairs.

12. The average labor cost is **$70 - $100** per day for a Helper, **$100 - $150** per day for a Driver.

13. Truck insurance – We are self-insured, and offer competitive rates.

14. The required amount of liability coverage is **five million dollars.**

15. Delivery Specialists are required by the State to provide Workers Compensation/Occupational Accident coverage for their assistants. The annual cost for the coverage will vary based on each State's requirements. The range is from **3% -14% of revenue.**

16. There is a damage and claims system which makes the Delivery Specialist responsible for any damage to items once he or she loads the item. The claim system also extends to in-home damage. You need to set aside money for claims and the average would be **$2,500.00** per year. Some accounts are more aggressive with claims than others. **Recruiter will provide specifics on the exposure and procedures of the account.**

17. You must cover: all fees (e.g. truck registration, accounting fees, cellular phone fees, etc), all taxes (e.g. self-employment tax, withholding/payroll tax, etc.) and all incidental expenses (e.g. maps, road tolls, etc.).

In Terms of Working Conditions

18. The business includes loading, delivery, setup and handling paperwork. The business is physically demanding and includes lifting, carrying and moving items of heavy weight. **Recruiter - Be sure to be specific about typical lengths of loading time and any check-in requirement expectations relative to client policy and the amount of time it will take.**

19. The typical work schedule is 5 to 6 (sometimes 7) days per week and usually 10-12 hours a day including loading. The schedule is account specific. Exel Direct's goal is to keep Delivery Specialist's trucks operating at full capacity.

20. The number of days off varies. Delivery Specialists can take a day off as long as their truck is running with a DOT qualified, Exel Direct certified, driver as a substitute.

21. Routing suggestions may be made by the managers at manned accounts, but the Delivery Specialist has the opportunity to adjust that routing as long as delivery time commitments are met. At unmanned client accounts, the Delivery Specialist will do the routing. There is no seniority on route assignments.

22. Delivery Specialists and their assistants must wear a clean uniform daily, keep the truck clean and maintain a neat bodily appearance.

23. When starting, Exel Direct provides 2-3 weeks of initial orientation with a Professional Development Coordinator (PDC) or Master Contractor to provide Delivery Specialists with information and support on every aspect of their new business from load-out to the customer's home.

The Benefits of Contracting with Exel Direct

24) Owning your own business: With a small financial investment on your part, you are revenue producing and have 100% of your customers the first day that you are in business. Fortunately, you don't have to worry about collecting amounts due from retailers or selling your services.

25) Revenue potential: Although the gross earnings may seem large, you will be responsible for all costs discussed in this presentation. The revenue may vary seasonally, yet, there is potential for significant annual net earnings.

26) Working outdoors: You have the freedom to work outdoors and have the opportunity to see different places on a daily basis. Of course, weather conditions are always a factor.

27) Home every night: Because you are assigned to a local account, making local deliveries, you will be home every night. You have balance in your life and you get to spend quality time with your family and can participate in family activities.

28) The profits are yours: The business is yours. The more you put into it, the more you will get out of it. If you invest time and money into your business, you are the one that reaps the benefits.

29) Financial stability: Exel Direct is the nation's largest third party provider of delivery services. By contracting with Exel Direct you don't need to sell your services to clients, Exel Direct provides you with customers.

30) The opportunity to expand: At Exel Direct you will have the opportunity to grow your business within our business by adding additional trucks (to a limit). The opportunity is given to everyone who signs a contract, only you can make it happen by training, with a focus on customer service, and qualifying your assistants.

31) Opportunity to participate in the Master Contractor/Star Force programs: If you can meet the strict standards necessary to participate in these programs, you will find that you can make extra money by helping orient new Delivery Specialists or traveling to other locations to provide delivery services.

32) Only one location: You are based at only one location but may work at others in major metropolitan areas.

33)Parking: You can typically park your truck at your account, if applicable.